CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 29, 1937.

CERTIORARI GRANTED DECEMBER 6, 1937.

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No. 8432

United States

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
a corporation,
Respondent.

Transcript of Record

In Two Volumes

VOL. I.

Pages 1 to 384

Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

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PAGE

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PROCEEDINGS IN N. L. R. B.

	Page
Amended Complaint and notice of hearing	20
Answer to Complaint	14
Certificate of N. L. R. B.	85
Charge	1
Complaint and notice of hearing	5
Conclusion of Law	79
Decision	55
Exceptions to intermediate report and to proceedings heretofore had	48
Findings of Fact	60
Intermediate Report	30
Notice of Hearing	13, 28
Order of November 1, 1935 designating Trial Examiner	14
Order of December 17, 1935 designating Trial Examiner	29
Order to cease and desist	80

PROCEEDINGS IN C. C. A.

Certificate of Clerk of C. C. A.	760
Opinion of C. C. A.	104

Index

Page

Order directing filing of opinion, etc. 103

Order of submission 102

Order granting leave to file petition for enforcement, etc. 91

Order upon petition for the enforcement of an order of the N. L. R. B. 96

Petition for the enforcement of an order of the N. L. R. B. 93

Testimony 141

Witnesses for N. L. R. B.

Algrava, Clifford

—direct 525

—cross 532

—redirect 542

—recross 543

Anger, Robert

—direct 150

—cross 194

—redirect 212

Arieta, Pasqual

—direct 583

—cross 584

—redirect 592

—recross 593

Baker, Jack

—direct 510

—cross 515

Index Page

Witnesses for N. L. R. B. (Con't)
Bedford, Walter
—direct 581
Blanco, Manuel
—direct 599
—cross 607
—redirect 607
Carmo, Joe
—direct 716
Costa, George
—direct 279
—cross 277
—redireet 288
—recross 293
De Carlo, Nick
—direct 568
—cross 575
—redirect 579
Dolin, Arthur
—direct 305
—cross 311
Doyle, Larry
—direct 258
—cross 271
Ellis, Fern
—direct 705
Freitas, Frank
—direct 594
—cross 597

Index Page

Witnesses for N. L. R. B. (Con't)

Gardner, Orville
—direct 608
—cross 611
—redirect 611

Granada, Frank
—direct 469
—cross 473

Hughes, Rufus
—direct 295

Martin, Connie
—direct 480
—cross 484
—redirect 488
—recross 488
—redirect 489

Olivera, Gerald
—direct 518
—cross 523

Pepitone, Joe
—direct 256
—cross 257

Phillips, Frank
—direct 545
—cross 552
—redirect 568

Index

Page

Witnesses for N. L. R. B. (Con't).

Pio, Alfred
—direct 489
—cross 495
—redirect 499
—recross 500

Reckling, John
—direct 501
—cross 506
—recalled, direct 509

Reich, Ernie
—direct 214
—cross 236
—redirect 251

Resburg, E. G.
—direct 331

Rocha, Ivo
—direct 321
—cross 326
—redirect 329

Sannebeck, August
—direct 626
—cross 631
—redirect 641
—recross 643
—redirect 647

Scott, Lester H.
—direct 474
—cross 476

Index Page

Witnesses for N. L. R. B. (Con't)

Toresen, Kenneth
—direct 619
—cross 623

Valin, John
—direct 312
—cross 320

Venturi, Fred
—direct 612
—cross 615
—redirect 617

Williams, R. F.
—direct 650

Woods, E. C.
—direct 347
—cross 386
—redirect 457
—recross 465
—redirect 468

Exhibits for National Labor Relations Board:

1. Applications for membership in International Longshoremen's Association 191
2. Excerpts from testimony of Bridges, Huddleson, etc. 368
3. Agreement between Santa Cruz Packing Company, et al, and Weighers, Warehousemen & Cereal Workers' Local 38-44, I. L. A. 364

Index

Page

34. Export figures for the key fruit packs for 1933-1934 44

35. Comparison of exports of canned fruit and vegetables from San Francisco Bay area and entire United States 44

Order allowing certiorari 761

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PAGE

United States of America Before the National Labor Relations Board.

Twentieth Region.

Case No. XX-C-1.

In the Matter of

SANTA CRUZ FRUIT PACKING COMPANY

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS LOCAL 38-44 INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

CHARGE.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned as business agent of the Weighers, Warehousemen and Cereal Workers Local 38-44 of the International Longshoremen's Association, and as the duly selected representative of the following men:

Name	Address
Ernie Reich	1839 70th Ave.
George Coste	1951 E. 24th St.
Iva Roche	1367 61st Ave.
E. G. Resburg	8815 D St.
Clifford Algrava	1951 E. 24th St.
Geo. M. Rose	1725 C. Seminary Ave.
Robert Anger	5810 Shattuck Ave.
Frank Phillips	5601 Hilton St.
Lester Scott	1456 56th Ave.
Pasqual Arieta	

Name	Address
Connie Martin	1780 Hayes St.
Alfred Pio	537 Lewis St.
Frank Granad	7101 Holliday Ave.
Rufus Hughes	4315½ Bond St.
Nick De Carlo	982 66th Ave.
Kenneth Toresen	2837 55th Ave.
Manuel Blanco	596 Estabrook St., San Leandro
Joe Pepitone	1121 27th Ave.
John Reckling	1839 71st Ave.
August Sannebeck	7123 Holly St.
Walter R. Bedford	982 66th Ave.
Fred Venturi	1630 61st Ave.
Joe Carmo	6109 E. Lawn St.
John Valin	635 Den St., Hayward
F. Ellis	2616 E. 11th St.
G. Olivera	1460 78th Ave.
L. H. Ledtke	1812 57th Ave.
Orville Gordon	1458 56th Ave.
Frank Freitas	1233 78th Ave.
Larry Doyle	1412 68th Ave.
Jack Baker	5811 East Lawn Ave.

members of the Weighers, Warehousemen, and Cereal Workers Local 38-44 of the International Longshoremen's Association, employed in the warehouse of the Santa Cruz Fruit Packing Company and constituting an overwhelming majority of the employees in that unit; hereby charges that the Santa Cruz Fruit Packing Company at 1175 57th Street in Oakland, Calif., has engaged in and is engaged in unfair labor practices within the mean-

ing of Section 8 of the National Labor Relations Act, in that:

I. The Santa Cruz Fruit Packing Company through its General Manager, Mr. E. E. Huddleson and others, has interfered with, intimidated, restrained, and coerced the aforementioned employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act. These employees joined the Weighers, Warehousemen and Cereal Workers Local 38-44 of the International Longshoremen's Association, and chose this organization as their representative to bargain collectively for them, to engage in concerted activities and for other mutual aid and/or protection. On or about August 3, Mr. Huddleson in addressing a group of his warehouse employees intimidated them from joining the union and threatened to discharge them and put the work in the hands of a contractor. This action and sundry and divers other actions by the company, its agents and servants being directly in violation of Section 8, Paragraphs (1) and (3) of the National Labor Relations Act.

II. That on or about Wednesday, August 7, 1935, the aforementioned employees attended a meeting for the purpose of engaging in concerted activities and for mutual aid and/or protection, and that the Santa Cruz Fruit Packing Company, its agents and servants, had knowledge of the attendance of these employees at this meeting and of the purposes thereof, and that when the said employees reported for work at their appointed hours the employer prevented them from pursuing their normal occupa-

tions and otherwise discriminated against them solely because of and for the sole reason that they had attended the aforesaid meeting and [2] had engaged in other acts for their mutual aid and/or protection; that this condition still prevails and has been followed by many sundry and divers acts of violence committed by the employer, his agents and servants, with the sole purpose of intimidating, coercing and preventing the aforesaid complaining employees from pursuing their right to self-organization, to join a labor organization, and to engage in concerted activities for mutual aid and/or protection.

III. That, at sundry and divers times, demands and requests have been made that the Santa Cruz Packing Company bargain collectively with the duly selected representatives of the aforementioned employees in the warehouse of the company, as provided in Section 9 (a) of the National Labor Relations Act; and that said employer through his duly authorized agents has failed and refused to bargain collectively with the duly authorized representative of these employees, and has stated that he would have nothing to do with the Union in any negotiations of any kind, in direct violation of Section 8 Paragraph (5) of the National Labor Relations Act.

The undersigned further charges that such unfair labor practices are unfair labor practices effecting

commerce within the meaning of the National Labor Relations Act.

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS, LOCAL 38-44 INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

By: E. C. WOODS.

Subscribed and sworn to before me this 27th day of September, 1935.

s/ R. G. WAGENET,
Regional Director N.L.R.B. 20th Dist. [3]

[Title of Court and Cause.]

COMPLAINT.

It having been charged by Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, 85 Clay Street, San Francisco, California, that the Santa Cruz Fruit Packing Company, 1175 57th Avenue, Oakland, California, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since February 6, 1914, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office and place of business in the City of Oakland, County of Alameda, and State of California, and is now and has continuously been engaged at a place of business in the City of Oakland, County of Alameda, State of California, (hereinafter called the Oakland Plant) in canning, packing, warehousing and shipping fruits, vegetables and other products. [4]

2. The respondent, in the course and conduct of its business, causes and has continuously caused large quantities of fruits, vegetables and other products canned, packed, warehoused and shipped by it to be purchased in the State of California and other states of the United States and transported in intrastate and interstate commerce to the Oakland Plant in the State of California; and causes and has continuously caused large quantities of cans and other materials used by it in its canning and packing business to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to the Oakland Plant in the State of California; and causes and has continuously caused the preponderant portion of the fruits, vegetables and other products canned, packed and warehoused by it to be sold and transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other

than the State of California; and causes and has continuously caused large quantities of fruits, vegetables and other products purchased in the State of California and other states of the United States and owned by large national canners and distributors of canned fruit, vegetables and other products, to be canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and other products; and causes and has continuously caused large quantities of fruit, vegetables and other products canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and other products as aforesaid to be transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other than the State of California, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states.

3. The respondent, by its officers and agents, on or about August 7, 1935, while engaged at the Oakland Plant as described above, [5] did refuse employment to and did discharge Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F.

Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, all warehouse workers employed by the respondent at the Oakland Plant, and has at all times since on or about said date refused to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them.

4. The respondent, by its officers and agents, refused employment to, discharged and refuses to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle, and Jack Baker, and each of them, for the reason that said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manual Blanco, Joe Pepitone, John Reck-

ling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and [6] Jack Baker, and each of them, joined and assisted a labor organization known as Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, and engaged in concerted activities with other employees in the Oakland Plant for the purpose of collective bargaining and other mutual aid and protection.

5. The respondent, by its officers and agents, while engaged at the Oakland Plant as described above, on or about August 3, 1935, did urge, persuade and warn its employees at the Oakland Plant to refrain from becoming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44, and did threaten the said employees with discharge if they became or remained members thereof.

6. The respondent, by its officers, agents and employees, while engaged at the Oakland Plant as described above, from August 7, 1935, down to and including the date of the filing of this complaint, has, by many sundry and divers acts of intimidation and coercion, interfered with, restrained and coerced its said employees at the Oakland Plant from assisting said Weighers, Warehousemen and Cereal Workers Local 38-44, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

7. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, [7] John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them; by urging, persuading and warning its employees at the Oakland Plant to refrain from becoming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44 and by threatening said employees with discharge if they became or remained members thereof; and by interfering with, restraining and coercing its employees as aforesaid, all as above set forth, and by all of said acts and each of them, the respondent did interfere with, restrain and coerce, and its interfering with, restraining and coercing

its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them, has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

8. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick De Carlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sennebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard [8] to the hire and tenure of employment of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger,

Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and did thus discourage and is thus discouraging membership in said Weighers, Warehousemen and Cereal Workers Local 38-44, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

9. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid Plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

10. The aforesaid acts of respondent set forth in paragraphs 3, 4, 5, 6, 7, 8 and 9 hereof constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and (3), and Section 2, subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board, on the 2nd day of November, 1935, issues its complaint against the Santa Cruz Fruit Packing Company, respondent herein. [9]

NOTICE OF HEARING

Please take notice that on the 18th day of November, 1935, at 10:00 o'clock in the forenoon, at the Extra Sessions Court Room in the Alameda County Court House, Fifth and Broadway, Oakland, California, a hearing will be conducted before the National Labor Relations Board, by its agent, Henry Eickhoff, Jr., designated in accordance with said Rules and Regulations, Series I, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the 20th Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its complaint and notice of hearing, to be signed by the Regional Director for the Twentieth Region on the 2nd day of November, 1935.

R. G. WAGENET,
Regional Director for the
Twentieth Region. [10]

[Title of Court and Cause.]

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 1st day of November, 1935.

Present: J. Warren Madden, Chairman; Edwin S. Smith.

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Henry Eickhoff, Jr., act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations —Series 1 of the National Labor Relations Board.

By direction of the Board:

(s) BENEDICT WOLF,
Secretary. [11]

[Title of Court and Cause.]

ANSWER TO COMPLAINT

Comes now Santa Cruz Fruit Packing Company, a Corporation, hereinafter called the respondent, and answering the complaint filed herein by the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent for said Board, pursuant to a charge heretofore made against said Santa Cruz Fruit Packing Company by said Local 38-44, International Longshoremen's Association, admits, alleges and denies as follows:

I.

Admits that respondent is and has been since February 6, 1914, a corporation organized and existing under and by virtue of the laws of the State of California, and that said respondent now has its principal place of business and office in the City of Oakland, County of Alameda, State of California; and admits that respondent is now, and at all times in said complaint mentioned has been, engaged at a place of business located at 1175 Fifty-seventh Avenue in the City of Oakland, County of Alameda, State of California (hereinafter called the Oakland Plant), in canning, [12] packing, warehousing and selling fruits, vegetables and other products. Respondent denies that it is now, or at any time in said complaint mentioned has been engaged in shipping fruits, vegetables, or any other products whatsoever in interstate or foreign commerce, or at all, except the physical transportation of certain materials purchased or sold within the State of California to ultimate destinations also within the State of California and without such movement of such materials coming from or going beyond the territorial limits of said State at any time.

II.

Respondent admits that in the course and conduct of its business it purchases and has continuously purchased large quantities of fruits, vegetables and other products, canned, packed and warehoused by it, within the State of California, and denies that it causes or has continuously, or otherwise, caused any fruits, vegetables or other prod-

ucts whatsoever to be transported in interstate commerce to the Oakland Plant in the State of California, or to any other plant or place. Respondent further denies that it causes and/or has continuously, or otherwise, caused large or any quantities of cans and/or other materials used by it in its canning and packing business or for any other purpose to be purchased and/or transported in interstate commerce from and/or through states of the United States other than the State of California to the Oakland Plant in the State of California, or to any other plant or place, or in any manner whatsoever. Respondent further denies that it causes and has continuously, or otherwise, caused large or any quantities of fruits, vegetables and/or other products purchased in the State of California and/or other states of the United States and owned by large or any other national canners and distributors of canned fruit, vegetables and/or other products to be canned, packed and/or warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and/or other products, and in this connection alleges that respondent is engaged in the canning and packing business in the State of California and is not engaged in shipping or transporting either raw materials or manufactured products in [13] interstate commerce, although the customers who purchase its manufactured products may distribute such purchases outside the State of California as well as within said state; denies that respondent causes and/or has continuously, or otherwise, caused large or any quantities of fruit, veg-

etables and/or other products canned, packed and/or warehoused at the Oakland Plant for and on behalf of said national canners and/or distributors, or for and on behalf of any one to be transported in interstate commerce, or at all, from the Oakland Plant or any other plant or place, to, into and/or through any state or states of the United States other than the State of California, and denies that all or any of the acts alleged in paragraph 2 of said complaint, or any other acts of said respondent constitute a continuous or other flow of trade, traffic and/or commerce among the several states.

III.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 3 of said complaint, and in this connection alleges that the men therein named failed and refused to work their regular shifts on said date and that other men were engaged to take their places in order that the business of respondent might continue without shut down or interruption which would have caused more than one thousand other employees to be without work; and in this connection further alleges that respondent has offered to re-employ certain of the said men who have not, since said date, engaged in acts of violence and coercion against the property and employees of respondent.

IV.

Respondent denies generally and specifically each and every, all and singular the allegations contained in paragraph 4 of said complaint.

V.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 5 of said complaint.

VI.

Respondent denies generally and specifically, each and every, all [14] and singular the allegations contained in paragraph 6 of said complaint, and in this connection alleges that said employees named in said complaint, together with officers, agents, pickets, and organizers of said Local 38-44, have, by many and divers acts of intimidation, coercion, and violence, attempted to interfere with, coerce and intimidate other employees of respondent, and have attempted to prevent the operation of the business of respondent by said means and acts.

VII.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 7 of said complaint, and alleges affirmatively that respondent has not done any act or thing in violation of any rights guaranteed in the National Labor Relations Act and has not engaged and is not now engaging in any unfair labor practices within the meaning of said act or otherwise.

VIII.

Respondent denies generally and specifically, each and every, all and singular the allegations contained in paragraph 8 of said complaint, and alleges affirmatively that respondent has not done any act or thing in violation of any rights guaranteed in

the National Labor Relations Act and has not engaged and is not now engaging in any unfair labor practices within the meaning of said act or otherwise.

IX.

Respondent denies that any of the acts alleged in said complaint or any acts of respondent occur or occurred in commerce among the several states, and deny that on the basis of experience in the aforesaid Plant and/or others or on any other basis in the same or other industries, said alleged acts or any of them burden and/or obstruct such commerce and/or the free flow thereof, and/or have led or tended to lead to labor disputes hindering and/or obstructing such commerce and/or the free flow thereof.

X.

Respondent denies that any of the acts alleged in said complaint, [15] or any other acts of respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and/or (3), and/or Section 2, subdivisions (6) and/or (7) of said Act.

Wherefore, respondent prays that this proceeding be dismissed.

SANTA CRUZ FRUIT PACKING COMPANY,
a corporation.
By E. E. HUDDLESON [16]

State of California,
County of Alameda.—ss.

E. E. Huddleson, being first duly sworn, deposes and says:

That he is an officer, to-wit, the President of the Santa Cruz Fruit Packing Company, a Corporation, and that he makes this verification for and on behalf of said corporation;

That he has read the foregoing Answer to Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein set forth upon information or belief, and as to those matters that he believes it to be true.

(Signed) E. E. HUDDLESON.

Subscribed and sworn to before me this 8th day of November, 1935.

[Seal] OLIVE A. BLEDSOE

Notary Public in and for the County of Alameda, State of California. [17]

[Title of Court and Cause.]

AMENDED COMPLAINT.

It having been charged by Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, 85 Clay Street, San Francisco, California, that the Santa Cruz Fruit Packing Company, 1175 57th Avenue, Oakland, California, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board

designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, said Regional Director having been duly authorized by the National Labor Relations Board, in accordance with Series 1, Article II, Section 7 of said Rules and Regulations, to issue this amended complaint, hereby alleges the following:

1. The respondent is and has been since February 6, 1914, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office and place of business in the City of Oakland, County of Alameda, and State of [18] California, and is now and has continuously been engaged at a place of business in the City of Oakland, County of Alameda, State of California, (hereinafter called the Oakland Plant) in canning, packing, warehousing and shipping fruits, vegetables and other products.

2. The respondent, in the course and conduct of its business, causes and has continuously caused large quantities of fruits, vegetables and other products canned, packed, warehoused and shipped by it to be purchased in the State of California and other states of the United States and transported in intrastate and interstate commerce to the Oakland Plant in the State of California; and causes and has continuously caused large quantities of cans and other materials used by it in its canning and packing business to be purchased and transported in interstate commerce from and through states of the United States other than the State of California to the Oakland Plant in the State of California; and

causes and has continuously caused the preponderant portion of the fruits, vegetables and other products canned, packed and warehoused by it to be sold and transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other than the State of California and to, into and through foreign countries; and causes and has continuously caused large quantities of fruits, vegetables and other products purchased in the State of California and other states of the United States and owned by large national canners and distributors of canned fruit, vegetables and other products, to be canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegtables and other products; and causes and has continuously caused large quantities of fruit, vegetables and other products canned, packed and warehoused at the Oakland Plant for and on behalf of said national canners and distributors of canned fruit, vegetables and other products as aforesaid [19] to be transported in interstate commerce from the Oakland Plant in the State of California to, into and through states of the United States other than the State of California and to, into and through foreign countries, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states and with foreign countries.

3. The respondent, by its officers and agents, on or about August 7, 1935, while engaged at the Oakland Plant as described above, did refuse employ-

ment to and did discharge Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, all warehouse workers employed by the respondent at the Oakland Plant, and has at all times since on or about said date refused to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them.

4. The respondent, by its officers and agents, refused employment to, discharged and refuses to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie [20] Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford,

Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle, and Jack Baker, and each of them, for the reason that said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, joined and assisted a labor organization known as Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, and engaged in concerted activities with other employees in the Oakland Plant for the purpose of collective bargaining and other mutual aid and protection.

5. The respondent, by its officers and agents, while engaged at the Oakland Plant as described above, on or about August 3, 1935, did urge, persuade and warn its employees at the Oakland Plant to refrain from becoming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44, and did threaten the said employees with discharge if they became or remained members thereof.

6. The respondent, by its officers, agents and employees, while engaged at the Oakland Plant as described above, from August 7, 1935, down to and

including the date of the filing of this complaint, has, by many sundry and divers acts of intimidation and coercion, interfered with, restrained and coerced its said employees at the Oakland Plant from assisting said Weighers, [21] Warehousemen and Cereal Workers Local 38-44, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

7. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them; by urging, pursuading and warning its employees at the Oakland Plant to refrain from be-

coming or remaining members of said Weighers, Warehousemen and Cereal Workers Local 38-44 and by threatening said employees with discharge if they become or remained members thereof; and by interfering with, restraining and coercing its employees as aforesaid, all as above set forth, and by all of said acts and each of them, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the [22] rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

8. By its refusal of employment to and its discharge of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and its refusal to reinstate said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John

Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Ernie Reich, George Coste, Iva Roche, E. G. Resburg, Clifford Algrava, Geo. M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad, Rufus Hughes, Nick DeCarlo, Kenneth Toresen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, [23] L. H. Ledtke, Orville Gordon, Frank Freitas, Larry Doyle and Jack Baker, and each of them, and did thus discourage and is thus discouraging membership in said Weighers, Warehousemen and Cereal Workers Local 38-44, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

9. The aforesaid unfair labor practices occur in commerce among the several states and with foreign countries, and on the basis of experience in the aforesaid Plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

10. The aforesaid acts of respondent set forth in paragraphs 3, 4, 5, 6, 7, 8 and 9 hereof consti-

tute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board, on the 14th day of November, 1935, issues its amended complaint against the Santa Cruz Fruit Packing Company, respondent herein.

NOTICE OF HEARING.

Please Take Notice that on the 9th day of December, 1935, at 10:00 o'clock in the forenoon, at the Extra Sessions Court Room in the Alameda County Court House, 5th and Broadway, Oakland, California, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series I, Article IV, [24] Section 3, and Article II, Section 22, on the allegations set forth in the amended complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twentieth Region, acting in this matter as the agent of the National Labor Relations Board, an amended answer to the amended complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules and Regulations, Series I, made and published by the National Labor Relations Board pur-

suant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof, the National Labor Relations Board has caused this, its amended complaint and notice of hearing, to be signed by the Regional Director for the Twentieth Region on the 14th day of November, 1935.

(Signed) R. G. WAGENET,
Regional Director for the Twentieth Region. [25]

[Title of Court and Cause.]

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 17th day of December, 1935.

Present: J. Warren Madden, Chairman;
John M. Carmody;
Edwin S. Smith.

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Roger J. Traynor act as Trial Examiner in the above case, in place and stead of Henry Eickhoff, Jr., and perform all the duties and exercise all the powers granted to trial

examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

(s) BENEDICT WOLF,
Secretary. [26]

[Title of Court and Cause.]

INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, through R. G. Wagenet, Regional Director for the Twentieth Region, designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, issued its complaint dated November 2, 1935, and its amended complaint dated November 14, 1935, against Santa Cruz Fruit Packing Company, respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on November 4, 1935, and the amended complaint and notice of hearing were duly served upon respondent on November 15, 1935, in accordance with said Rules and Regulations, Series 1, Article V, Section 1. The amended complaint alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, and preventing the exercise of rights guaranteed in Section 7 of that Act.

In summary, in respect of the unfair labor practices, the complaint stated:

1. The respondent, on or about August 7, 1935, by its officers and agents, discharged and refused to reinstate: Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank [27] Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, Jack Baker, the complainants in this case, all warehouse workers employed by the respondent at its Oakland plant, for the reason that they joined and assisted a labor organization, known as the Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, for purposes of collective bargaining, and other mutual aid and protection.

2. The respondent, by its officers, agents, and employees, urged, persuaded and warned its employees at the Oakland plant to refrain from becoming or remaining members of the aforementioned labor organization, threatened them with discharge if they became or remained members thereof, and otherwise restrained and coerced them from assisting it.

The discharges and the above acts are alleged to be unfair labor practices within the meaning

of Section 7, Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Thereafter respondent filed its answer, dated November 8, 1935, to the complaint, which was stipulated to be an answer also to the amended complaint, denying the allegations of violation, denying that the acts alleged in the Board's amended complaint, or any other acts in the course and conduct of its business, occur or occurred in interstate and/or foreign commerce or constitute a continuous flow of interstate and/or foreign commerce, and denying that any of the acts alleged in said complaint, or any other acts of respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) or Section 2, subdivision (6) or (7) of said Act. Respondent's answer alleges that the men named in said complaint failed and refused to work their regular shifts on or about August 7th, 1935, and that other men were engaged to take their places in order that the business of respondent might continue without shut down or interruption and that the complainants and officials of the union attempted to prevent the operation of the business of respondent by committing various acts of intimidation and violence.

Pursuant to the notice of hearing, the undersigned, as agent of the [28] National Labor Relations Board designated by said Rules and Regulations, Series 1, Article IV, Section 3, and Article II, Section 22, conducted a hearing on December 23rd and December 24th, 1935, and January 2nd, Janu-

ary 3rd and January 6th, 1936, at Oakland, California. The respondent, appearing by Paul St. Sure and E. H. Moore, the Board, appearing by its Regional Attorney, Bertram Edises, and the Weighers, Warehousemen and Cereal Workers Local 38-44, appearing by Sam Kagel, participated in the hearing.

Before the introduction of testimony the respondent objected to the jurisdiction of the Board on constitutional grounds, and moved to dismiss on the grounds that the Act under which the complaint was brought is unconstitutional, and that the facts stated in the complaint were insufficient to furnish the basis of an action under the Act. The motion to dismiss was denied without prejudice. Counsel then stipulated that respondent's objections regarding the constitutionality of the Act and the jurisdiction of the Board should be deemed to extend to the entire proceeding and all evidence introduced therein. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Following the Board's presentation of its case, the respondent offered no testimony, but moved to dismiss on the grounds of its original motion, and the additional grounds that the evidence failed to support the allegations of the amended complaint, and was insufficient to support any findings in the premises, and that the evidence affirmatively established that the respondent is not engaged in interstate or foreign commerce. The undersigned reserved decision upon the motion and after due consideration

hereby denies said motion. In accordance with said Rules and Regulations, Series 1, Article II, Section 28, the respondent and the Board waived oral argument at the close of the hearing, but were afforded an opportunity to file written briefs, and thereafter briefs were filed by respondent and the Board.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing the undersigned makes, in addition to the above, the following specific findings of fact:

1. The respondent is and has been since February 6, 1914, a corporation organized under and existing by virtue of the laws of the State of California, [29] having its principal office and place of business in the City of Oakland, County of Alameda, and State of California, and is now and has continuously been engaged at a place of business in the City of Oakland, County of Alameda, State of California (hereinafter called the Oakland Plant) in canning, packing, warehousing and shiping fruits, vegetables and other products.

2. The Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, an affiliate of the American Federation of Labor, is a labor organization, organized and existing for the purpose, among other things, of negotiating with employers in regard to wages, hours and conditions of employment. Organization of the Santa Cruz plant started in July, 1935, the moving factor being "Bob" Anger, a Santa

Cruz warehouse employee. Anger succeeded in enlisting as members of the union all of the warehouse workers, with the exception of the foreman and the shipping clerk. All of the complainants were respondent's employees and were regularly employed at respondent's Oakland plant.

Complainants joined the union chiefly to secure higher wages and shorter hours. At the time they joined the union the wage rates for the men at the warehouse were 35 to 45 cents an hour. During the busy season (July to October) 10 to 14 working hours per day were not uncommon. The plant operated both a day shift and a night shift.

On Monday, August 5, 1935, at about 6:00 p. m., E. E. Huddleson, General Manager of the Santa Cruz Fruit Packing Company, summoned all the men from both the Santa Cruz and Stokely warehouses to a meeting, at which he stated that he had heard they had joined the union and wanted to know what they meant by it. He asserted that he had no objection to unions, but that he would not have a union in his plant, and made it clear to the men that if they persisted in their union affiliation he would let the work out to a contractor. He asked why they did not come to see him instead of joining the union and stated that competitive conditions would not permit his acceding to what he understood to be the union scale of 62½ cents per hour. He concluded by telling the men that he would give them a couple of days to think it over.

The men informed E. C. Woods, the Business Agent of the union, of this speech and on the day

following (Tuesday, August 6th) Woods went to [30] see Huddlson. At this interview Huddleson made it clear that the company would not tolerate union organization of its plant, informing Woods that if he persisted in organizing the warehousemen he would let the warehouse work out on contract.

On the same day (Tuesday, August 6th) the union officials sent to respondent a proposed agreement regarding terms of employment. The proposed agreement was in no sense an ultimatum, but a suggested basis for preliminary discussion. (See Board's Exhibit No. 4.)

The initiation of the coplainants into the union was scheduled for Wednesday, August 7th. On Wednesday morning Bob Anger requested and received permission from Stanley Toreson, the foreman of the warehouse, for both day and night shift men to get off from work in order to attend the meeting. There can be no doubt of Toreson's authority to grant this permission.

Toreson subsequently asked certain of the night men, Pio, Doyle and Sonnebach if they were going to the meeting. Upon receiving an affirmative reply he said he would arrange to have their work done in the interim and that they were to come back to work after the meeting. The Stokely men, who had completed their work on that day at 4:30 p. m., did not require special permission to get off at that time. Each complainant, therefore, either worked

his full shift or received permission from the company to quit work in order to attend the meeting.

When Ernie Reich, the assistant foreman, reported for work on the night shift at about 5:20 p. m., Toreson told him that "the old man gave us orders not to let anybody go to work that is going to the meeting." To Costa and Algrava, two night shift men who were there about the same time, however, he said merely that there would be no night shift that night.

The men's temporary absence while in attendance at the union meeting on Wednesday night caused no interference with operations at the plant. The day warehousemen had cleared the floor of cans for the day's run during the morning. Only one man was needed to trundle cans from the cannery to the warehouse. The small night crew on the pork and bean line had been informed by Toreson that he could fill their places for the duration of the meeting, provided they returned to work afterward. There were can stackers available [31] to take their places.

Reich said nothing about Toreson's remarks to him at the union meeting, and none of the other men had any warning that their getting off from work would affect their employment.

On Monday, August 5th, and Tuesday, August 6th, some of the men noticed one Manuel Gomez, a labor contractor, walking around the warehouse and inspecting its operations. Gomez was present again on Wednesday afternoon at about 2:30 p. m. At this time he had with him two Chinese. At about

5:20 p. m. on the same day Gomez brought in six or seven Chinese and negroes and put them to work in the warehouse. The time cards show that by 6:00 p. m. of the same day Gomez had thirteen of his men at work in the warehouse.

Pursuant to Toreson's instructions, Pio, Doyle and Sonneback returned for work after the meeting. They found a "couple" of guards, one of them armed, at the plant, and were refused admission by Toreson. Thursday morning the day men reported for work at the usual time, but found the gates locked and the premises guarded. Woods, the Business Agent of the union, learned of the lockout through a telephone call and came at once to the plant. Attempting to see Huddleson, he was informed that the latter was not in. He then succeeded in communicating with Gomez and asked him to put the men back to work. Gomez refused, stating that the men were on the street "because they belong to the union." The men thereafter formed a picket line, with orders from the union to confine their activities to peaceful persuasion. There is no evidence in the record of violence on the part of complainants or their fellow union members. Picketing activity was confined to "flagging" trucks and informing the drivers of the lockout, without physical interference with their passage into the plant.

All of the complainants testified that they would return to their jobs if permitted, and the union has on several occasions, commencing immediately after the lockout, requested the company to put

the men back to work. None of these requests have been granted by the company. On one occasion Huddleson offered to re-employ all but six men whom he alleged had been guilty of misconduct "when I have an opportunity to do so" and "when it is convenient to do so". This cannot be said to constitute an offer of reemployment. A [32] subsequent "offer" to reinstate the complainants was made "on condition that the organizers * * * stay away from them." (Board's Exhibit No. 20). This was not an offer of compliance with the National Labor Relations Act.

At no time did the respondent contend that the men were unsatisfactory as employees other than to allege that the men failed to work their regular shifts on or about August 7th, 1935. This allegation finds no support in the record.

The record clearly shows a premeditated design to lock out the men for the reason that they joined and assisted a labor organization known as Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and that the men were in fact locked out for this and for no other reason.

By said lockout and refusal to employ the complainants and each of them, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

By said lockout and refusal to employ the complainants and each of them, respondent has discouraged membership in the labor organization known as Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association.

The allegations in the amended complaint of the unfair labor practices committed by respondent are fully supported by the facts.

3. The respondent cans annually approximately 1,699,270 cases of canned fruits and vegetables. Respondent annually ships and causes to be shipped and transported to foreign countries (almost entirely to the British Isles) 153,274 cases of said canned goods, of which approximately 119,288 cases were sold under C.I.F. sales contracts (Canners' League Form) and approximately 33,985 cases were sold under F.O.B. San Francisco Bay Points sales contracts (Canners' League Form). Respondent annually ships and causes to be shipped and transported to Boston, New York, Philadelphia, Chicago, Kansas City, Minneapolis, St. Paul, Detroit, Cincinnati, Sioux City, Marshalltown, in the states of Massachusetts, New York, Pennsylvania, Illinois, Missouri, Minnesota, Michigan, Ohio, Iowa and to other points in the United States out- [33] side the state of California 473,620 cases of said canned goods, said products being sold under F.O.B. San Francisco Bay Points sales contracts (Canners' League Form). Respondent annually ships and causes to be shipped and transported to points outside the state of California a total of approximately

626,894 cases of canned fruits and vegetables. The chief products so shipped and caused to be shipped and transported by respondent are peaches, pears, apricots, spinach and asparagus. Respondent is among the five largest fruit and vegetable canners in the state of California, employing during the "peak" packing season (June through September) from 1200 to 1500 persons. Employment in the cannery proper is largely seasonal in nature, but certain employees, including warehousemen, are retained in employment throughout the year.

Three methods of transportation, namely, water, rail and truck, are used in the shipment of respondent's products. Export shipments, the preponderant part of which are to the British Isles, go by water. The water route is likewise the chief method of carriage to points within the United States outside the State of California. About 20 per cent of respondent's products going outside the state is shipped by rail. A spur track connects respondent's plant with the main line of the Southern Pacific Railroad. The track is the property of respondent with a right of reversion in the railroad company. An undetermined amount of respondent's products is shipped by truck direct to destination including the cities of Portland, Oregon and Seattle, Washington.

There is a constant stream of loading and shipping at respondent's plant throughout the entire year. Approximately three to four thousand cases were loaded daily into the various vehicles, all such loading being a substantial and regular part of the

work of each of the complainants. In the case of the loading of freign cars and overland trucks, complainants placed said products directly upon the principal carrier. In the case of shipments by boat, complainants loaded the products onto trucks which then transported said goods to the docks. The goods customarily remained on said docks a few days pending reloading into vessels. Despite this temporary interruption such shipments constitute in essence one entire continuous operation. In all cases complainants actually started the product in course of transportation to its ultimate destination.

As a direct consequence of respondent's discriminatory lockout of [34] complainants the flow of respondent's products into the channels of interstate and foreign commerce was, during the period August 10th, 1935 to September 27th, 1935, materially burdened and obstructed. The movement of respondent's products by truck to vessels virtually ceased during this period.

The fruit and vegetable canning industry, in which respondent is engaged, is one of the most important industries in the western United States. By far the largest number of fruit and vegetable canners in the West are located in California. There are 130 canning concerns in this state, having total of 192 factories. (Board's Exhibit No. 15) In 1934 Western canneries produced 32,164,681 cases of canned fruits, having an estimated value of $115,-032,895 and 18,270,472 cases of canned vegetables, having an estimated value of $42,844,150. (Board's Exhibit No. 34, p. 30) Nearly half the fruit pack,

or 13,762,286 cases, and more than two-thirds of the vegetable pack, or 12,660,212 cases, were canned in the state of California. (Board's Exhibit No. 24) In 1934 the most important California canned fruit packs were as follows: Cling peaches 8,258,344 cases, Pears 2,662,842 cases, and Apricots 1,774,491 cases. The most important California canned vegetable packs in 1934 were: Tomatoes 3,289,920 cases, Spinach 1,993,456 cases, Asparagus 1,914,208 cases. (Board's Exhibit No. 24)

California leads the entire nation in number of wage earners employed in its fruit and vegetable canning and preserving industries. In 1933 a depression year, the average number of wage earners and salaried employees for the year was 25,709. (Board's Exhibit No. 28, pp. 2, 3) In 1933 a total of $16,645,000 was paid out by California fruit and vegetable canning and preserving plants in wages and salaries. (Board's Exhibit No. 28, p. 3) The fruit and vegetable canning and preserving industry being essentially a seasonal one, the number of workers employed during the peak period of approximately four months (July to October) would be several times the figure set out above.

About 85 per cent of the peaches, 85 per cent or more of the apricots, 85 per cent of the pears, 85 per cent or more of the spinach, and 85 per cent or more of the asparagus packed in California canneries are sold to out-of-state buyers and transported outside the state of California.

While figures for interstate movement are not available, export figures for the key fruit packs for 1933-1934 are as follows: [35]

BOARD'S EXHIBIT NO. 34

Product	Total Shipments (cases)	Exports (cases)	Percentage of shipments exported
Canned peaches	9,287,000	1,733,000	18%
" pears	4,584,000	1,381,000	39%
" apricots	2,572,000	538,000	20.9%

The greatest shipping center in the United States for canned fruits and vegetables is the San Francisco Bay area. (Board's Exhibit No. 25.) In 1933 73,983,226 pounds of peaches, of a declared value of $4,116,066, were exported from the entire United States. Of this quantity, 72,003,223 pounds, declared value $4,052,376, or approximately 97 per cent were declared at the San Francisco Custom House and passed through San Francisco Bay area ports. The importance of the San Francisco Bay area as an export center for canned fruits and vegetables is indicated in the following table:

BOARD'S EXHIBIT NO. 35

Product	Total 1933 Exports Entire U. S. and Declared Value of Same	1933 Exports From S. F. Bay Area and Declared Value of Same	Percentage of Total U. S. Exports
Canned peaches	73,983,226 pounds $4,116,066	72,003,223 pounds $4,052,376	97% approx.
Canned pears	70,748,912 pounds $4,358,874	41,162,349 pounds $2,661,854	58% "
Canned apricots	22,947,901 pounds $1,386,711	21,745,126 pounds $1,310,964	98% "
Canned asparagus	15,724,726 pounds $1,589,984	13,293,068 pounds $1,326,310	87% "
Canned tomatoes	3,166,051 pounds $181,583	1,880,425 pounds $103,379	60% "

(Board's Exhibit No. 25; see also Board's Exhibit No. 34 for statistics on spinach.)

The production of canned peaches, the most important western canned product, is concentrated almost entirely in California and is the most popular American canned fruit in foreign markets. (Board's Exhibits No. 34 and No. 35).

During 1934 and the first half of 1935 there were 15 strikes and lockouts in the canning and preserving industries of the United States. Eight of these strikes involved questions of union organization, including recognition and discrimination; 7,484 workers were involved in these stoppages, 2,581 of them in disputes over the above mentioned union issues; 67,597 man-days of them in disputes over the above mentioned issues; 67,597 man-days of potential productive activity was lost to the industry, 58,109 of them being in connection with [36] disputes over union organization matters.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

(1) Respondent, by discharging and refusing to employ Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by interfering with, restraining and coercing its empolyees in the exercise of the rights guaranteed

in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

(2) Respondent, by discharging and refusing to employ Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manual Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by discouraging membership in the labor organization known as Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, as set forth in the above findings of fact, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore the undersigned recommends that:

(1) Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through rep- [37] resentatives of their own choosing, and to engage in concerted

activities, for the purpose of collective bargaining or other mutual aid or protection, and from discouraging membership in any labor organization by discrimination in regard to tenure of employment or any term or condition of employment.

(2) In order to effectuate the policies of the Act respondent:

(a) offer immediate and full reinstatement to their former positions to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick DeCarlo, Kenneth Toreson, Manual Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle and Jack Baker, the complainants herein, with all rights and privileges previously enjoyed;

(b) pay to each of said complainants a sum of money equal to that which he would normally have earned as wages during the period from August 10, 1935, when he was discharged, to the date of his reinstatement, computed at the wage rate which he was paid at the time of his discharge by respondent, less whatever sum he has earned subsequent to his discharge by respondent, such sums to be determined by agreement between the parties, or in the event such an agreement is not reached within five (5) days from the date of this report, through an accounting to be had before the undersigned not later than ten (10) days from the date

of this report at such time and place as the Regional Director for the Twentieth Region, National Labor Relations Board, shall designate, and after due notice by said Regional Director to the parties hereto;

(c) file with the Regional Director for the Twentieth Region, on or before February 13th, 1936, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that unless within five (5) days respondent notifies said Regional Director in writing that he will comply with the foregoing recommendations the matter be referred forthwith to the National [38] Labor Relations Board and the Board issue an order requiring respondent to take the action aforesaid.

Signed at Berkeley, California, this 30th day of January, 1936.

/s/ ROGER JOHN TRAYNOR
Trial Examiner [39]

[Title of Court and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT AND TO PROCEEDINGS HERETOFORE HAD

Respondent Santa Cruz Fruit Packing Company hereby presents its exceptions to the record and Intermediate Report in the above entitled matter as required by Section 32 of Rules and Regulations, Series 1, National Labor Relations Board.

The filing of these exceptions shall not be deemed to constitute a waiver of any rights, whether legal or equitable, of respondent in the premises and shall not be deemed to constitute any admission on the part of respondent that said National Labor Relations Board has jurisdiction of the matter in controversy or that the National Labor Relations Act is constitutional or valid, but these exceptions are filed for the sole purpose of protecting and preserving the rights, if any, of respondent in the premises, particularly in view of the provisions of Section 33 of said Rules and Regulations, Series 1, which provide, among other things, that a failure to file a statement of exceptions shall operate as submission of the case to the Board on the record and the report.

Respondent specifically reserves and claims the right to proceed by a Bill of Complaint in Equity or otherwise to prevent and restrain further proceedings in the premises by said National Labor Relations Board and does not intend, by the filing of these exceptions, to submit to the alleged jurisdiction of said Board in any particular. [40]

EXCEPTION NO. I.

Before the introduction of testimony at the hearing had in the premises, respondent objected to the jurisdiction of the Board on constitutional grounds and moved to dismiss complaint on the grounds that the Act under which the complaint is made is unconstitutional and the further grounds that the facts stated in the complaint were insufficient to

furnish the basis of any action under the Act. This motion to dismiss was denied by the Trial Examiner, and the respondent hereby excepts to the said denial of said motion and specifies such denial as "Exception No. I."

EXCEPTION NO. II.

Respondent at said hearing objected to the introduction of any and all testimony by complainants on the ground that the Board was without jurisdiction and on the grounds that the Act under which the complaint was brought is unconstitutional, but said objection to the admission of said testimony was overruled by the Trial Examiner. Respondent excepts to such ruling and specifies the overruling of said objections as "Exception No. II."

EXCEPTION NO. III.

At the conclusion of the presentation of the Board's case, respondent moved to dismiss the complaint and all proceedings thereunder on the following grounds:

First: That said complaint does not state facts sufficient to constitute a cause of action or basis for complaint;

Second: That the National Labor Relations Board and the Regional Board, and each of them, are without jurisdiction to hear the issues raised by the complaint and answer on file herein, and are without jurisdiction to proceed in the premises;

Third: That the National Labor Relations Act, approved July 5, 1935, violates the terms and provi-

sions of the Constitution of the United States and particularly Section 8 of Article One thereof and the Fifth Amendment thereto, and that said Act is inherently invalid. [41]

Fourth: That the evidence adduced at the hearing herein is insufficient to support all or any of the material allegations contained in said complaint and is insufficient to support any findings in the premises;

Fifth: That the evidence affirmatively establishes that the Respondent is not engaged in interstate or foreign commerce.

Said motion to dismiss was denied by the Trial Examiner and respondent excepts to denial of said motion and specifies such denial of said motion as "Exception No. III."

EXCEPTION NO. IV.

Respondent takes exception to each and every, all and singular the findings of fact set forth in the Trial Examiner's Intermediate Report, for the reason that the testimony introduced and received at said hearing, does not support said findings or any of them. Wherefore, respondent excepts to said findings and each of them. *Wherefore, respondent excepts to said findings and each of them* as "Exception No. IV."

EXCEPTION NO. V.

Respondent further specifically excepts to the conclusions contained in the findings to the effect that the allegations in the amended complaint relating to unfair labor practices committed by re-

spondent are fully supported by the facts and excepts to said finding for the reason that the evidence introduced is insufficient to support said finding and specifies this "Exception No. V."

EXCEPTION NO. VI.

Respondent specifically excepts to the finding that as a direct consequence of respondent's alleged discriminatory lockout of complainants the flow of respondent's products into the channels of interstate and foreign commerce was materially burdened and obstructed, and bases said exception on the grounds that there is no evidence to support such finding and specifies such exception as "Exception No. VI." [42]

EXCEPTION NO. VII.

Respondent takes exception to the conclusions and recommendations contained in said Intermediate Report for the reasons that said conclusions and recommendations are not supported by any testimony and are against law, and respondent specifies said exception as "Exception No. VII."

EXCEPTION NO. VIII.

Respondents specifically takes exception to each and every, all and singular the recommendations contained in said Intermediate Report for the reason that there is no authority and law for the making of the orders, for the doing of the acts referred to in said recommendations and specifies said Exception as "Exception No. VIII."

EXCEPTION NO. IX.

Respondent excepts to the record, the Intermediate Report, and any and all proceedings had and contemplated in the premises for the reason that the National Labor Relations Act is unconstitutional, illegal and wholly void and particularly as applied to complainant and complainant's business is unconstitutional, illegal and wholly void in the following respects, among others:

(1) Said Act cannot be sustained under the Commerce Clause contained in Section Eight of Article I of the Constitution of the United States since it seeks to regulate matters concerning the wholly intrastate business of complainant, as herein set forth, a regulation which does not constitute the regulation of commerce among the several States or with foreign nations.

(2) Said Act is violative of the Tenth Amendment to the Constitution of the United States, in that it constitutes an invasion by the Federal Government of fields of regulation reserved by that Amendment to the States or to the People, because said Act is in purpose, in essence and on its face an attempt to regulate matters not committed to the Federal Government by the Constitution of the United States, in that it attempts to regulate local industry, including the relations between employers, including complainant, and their employees in respect to rates of pay, wages, hours of employment and other conditions of employment. [43]

(3) Said Act is violative of the Fifth Amendment to the Constitution of the United States in that:

(a) it attempts to deprive complainant without due process of law of the liberty guaranteed to it by that amendment;

(b) it attempts to deprive complainant without due process of law of its property rights, including the right to deal freely and independently with its employees, or any of them, or any group thereof, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(c) it attempts to take the private property of complainant for a public use without the payment of just compensation;

(d) it is wholly unreasonable, arbitrary and capricious.

(4) Said Act is violative of the Fourth Amendment to the Constitution of the United States in that it permits and authorizes unreasonable searches and seizures of papers and effects of employers, including complainant, and deprives employers, including complainant, of the right to be secure in their papers and effects.

(5) Said Act is violative of the Third Article to the Constitution of the United States in that it purports to invest judicial power of the United States in large part in the National Labor Relations Board and not in the courts as required by said Article, and said Act thereby purports to infringe upon a field of constitutional authority of the courts of the United States.

(6) Said Act is violative of the Seventh Amendment to the Constitution of the United States in

that no trial by jury is permitted or required by said Act.

And respondent specifies this exception as "Exception No. IX."

/s/ DECOTO and ST. SURE
Attorneys for Santa Cruz Fruit Packing Company, a corporation. [44]

United States of America Before the National Labor Relations Board.
Case No. C-51.

In the Matter of

SANTA CRUZ FRUIT PACKING COMPANY, a Corporation,

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS, LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

DECISION

STATEMENT OF CASE

On September 27, 1935, Weighers, Warehousemen and Cereal Workers Local 38-44, hereinafter referred to as the union, filed with the Regional Director for the Twentieth Region a charge that the Santa Cruz Fruit Packing Company, of Oakland, California, hereinafter called respondent, had

engaged and was engaging in unfair labor practices forbidden by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On November 2, 1935, the Board issued its complaint against respondent. The complaint was signed by the Regional Director for the Twentieth Region and alleged that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices the complaint alleged in substance:

(1) Respondent, on or about August 7, 1935, discharged and thereafter regused to resinstate: Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, Jack Baker, warehouse workers employed by the respondent at its Oakland plant, because they had joined and assisted the union.

(2) Respondent urged, persuaded and warned its warehouse employees at the Oakland plant to refrain from becoming or remaining members of the union, threatened them with discharge if they became or remained members thereof, and otherwise restrained and coerced them from assisting it.

The complaint and accompanying notice of hearing were served on respondent in accordance with Article V of the National Labor Relations Board Rules and Regulations—Series 1. On November 8, 1935, respondent filed its answer to the complaint denying the allegations of violation, denying that the acts alleged in the Board's complaint, or any other acts in the course and conduct of its business, occur or occurred in interstate and/or foreign commerce or constitute a continuous flow of interstate and/or foreign commerce, and denying that any of the acts alleged in the complaint, or any other acts of [45] respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and of Section 2, subdivisions (6) and (7) of the Act. Respondent's answer alleged that the men named in the complaint failed and refused to work their regular shift on or about August 7, 1935 and that other men were engaged to take their places in order that the business of respondent might continue without interruption. Respondent also alleged that it had offered to re-employ all the men named in the complaint except those who had committed various acts of intimidation and violence since the inception of the dispute.

On November 14, 1935, the Board issued its amended complaint alleging that respondent is engaged in foreign as well as interstate commerce. It was stipulated at the hearing that respondent's answer would apply to the complaint as so amended.

Pursuant to notice, a hearing was conducted by Roger John Traynor, the duly designated Trial Examiner, on December 23 and December 24, 1935, January 2, January 3 and January 6, 1936, at Oakland, California. Respondent, appearing by Paul St. Sure and E. A. Moore, the Board, appearing by its Regional Attorney, Bertram Edises, and the union, appearing by Sam Kagel, participated in the hearing. Full opportunity to be heard, cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

Before the introduction of testimony respondent objected to the jurisdiction of the Board on constitutional grounds, and moved to dismiss on the further ground that the facts stated in the complaint were insufficient to furnish the basis of an action under the Act. The motion to dismiss was denied without prejudice. Counsel then stipulated that respondent's objections to the constitutionality of the Act and the sufficiency of the complaint should be deemed to extend to the entire proceeding and all evidence introduced therein. Following the Board's presentation of its case respondent offered no testimony, but moved to dismiss on the grounds of its original motion, and on the additional grounds that the evidence failed to support the allegations of the complaint, that it was insufficient to support any findings in the premises, and that the evidence affirmatively established that respondent is not engaged in interstate or foreign commerce. The Trial Examiner denied this motion.

Respondent and the Board waived oral argument at the close of the hearing, but briefs were filed by respondent and the Board.

Upon the record thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on January 30, 1935, filed an intermediate report, finding in substance that respondent is engaged in interstate and foreign commerce; that respondent had committed unfair labor practices in violation of Section 8, subdivisions (1) and (3) of the Act in interfering with its employees' membership in the union, by discharging them for union activities and by refusing to reinstate all the warehousemen named in the complaint; and that such unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. The Trial Examiner recommended that respondent cease and desist from interfering with the union activities of its employees and that it immediately reinstate all the men named in the complaint with all privileges previously enjoyed and with back pay.

We find that the evidence supports the Trial Examiner's rulings, findings and conclusions. Nothing in respondent's exceptions to the intermediate report, which are discussed below, requires any material alteration of such findings and conclusions. [46]

Upon the record in this case, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

1. The Santa Cruz Fruit Packing Company and its Relation to Stokely Bros.

(a) The Santa Cruz Fruit Packing Company

The Santa Cruz Fruit Packing Company is a California corporation which is among the four or five largest fruit and vegetable canning concerns in the state. It operates two canneries, one at Oakland, California, and one at Seabright, near Santa Cruz, California.

Respondent is engaged at the Oakland plant, where the present dispute arose, in canning, packing, warehousing and shipping fruits, vegetables and agricultural commodities, the bulk of which are grown in California. Tomatoes, and tomato products, peaches, apricots, spinach, pears, asparagus, and pork and beans, are, in the order named, the principal products canned and sold by respondents.

During 1935 the total pack of respondent amounted to approximately 1,699,270 cases of canned fruits and vegetables. This figure includes approximately 105,814 cases carried over from 1934. Of the 9.02% of the total pack shipped to foreign countries, 7.02% was sold under C. I. F. sales contracts (Canners' League Form) and 2% was sold under

F. O. B. San Francisco Bay Points sales contracts (Canners' League Form). Approximately 473,620 cases of canned goods were sent to the States of New York, Illinois, Kansas, Missouri, Minnesota, Michigan, Ohio, Iowa, Massachusetts, Pennsylvania, and to other points in the United States outside the State of California, under F. O. B. San Francisco Bay Points sales contracts (Canners' League Form). Goods thus transported to states outside California comprised about 27.87% of the total pack. 11.78% of the pack remained unsold in December, 1935. Respondent thus shipped approximately 36.89% of its total pack, outside of California in 1935. Peaches, pears, apricots, spinach and asparagus are the chief products so shipped.

The three methods of transportation used by respondent are water, rail and truck. Export shipments, the preponderant portion of which are sent to the British Isles, go by water. The water route is also the chief method of carriage to points within the United States outside the State of California. Approximately 20 per cent of respondent's products going to other states is shipped by rail. An undetermined amount of respondent's products is shipped by truck directly to the point of destination.

There is a constant stream of loading and shipping of products out of respondent's plant throughout the entire year. Approximately three to four thousand cases are loaded daily into the various vehicles of conveyance. All such loading is a substantial and regular part of the work of the ware-

housemen here involved. Where the shipments are by rail or overland trucks, the men load directly into the principal carriers. Where the shipments are by boat, the work of respondent's warehousemen consists of loading the products onto the trucks which transport the goods to the docks. The men here involved thus actually start all the products of respondent upon the course of transportation to their ultimate destination.

All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States and with foreign countries. The warehousemen here involved are engaged in operations in the course and conduct of such commerce and are an integral part of such commerce. [47]

(b) Stokely Bros.

Stokely Bros. is an Indiana corporation owning a warehouse across the street from respondent's plant and is respondent's principal customer. Stokely's warehouse labor is managed and supervised by Huddleson, the general manager of respondent, Williams, respondent's assistant general manager and Remington, respondent's supreintendent. These officers are paid by respondent; Morris, the foreman at Stokely, and Frates, the assistant foreman, are alone paid by Stokely Bros. All the warehousemen at the Stokely warehouse are paid by Santa Cruz with its own checks.

II. The Unfair Labor Practices

(a) The Lockout

Employment at respondent's plant during the "peak" season (which is June through September) ranges from 1200 to 1500 persons, of whom approximately thirty are warehousemen. Employment in the cannery proper is largely seasonal in nature, but certain employees, including the warehousemen, are retained in employment throughout the year. The warehousemen receive from 35 to 40 cents an hour, and in the busy season sometimes work 14 to 17 hours a day.

Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, is a labor organization affiliated with the American Federation of Labor and existing for the purpose of negotiating with employers with respect to wages, rates of pay, hours of employment, and conditions of work. Organization of the Oakland plant started in July 1935 through the initiative of "Bob" Anger, a warehouseman at respondent's plant and a former union man. Anger had approached the union and been told that the Santa Cruz men would be taken in if a sufficient number made application. By the end of July all of the permanent warehousemen of respondent except the foremen and straw bosses had made formal application for membership. Organization work was not done during working hours and the fact of union affiliation was not made known to respondent until

Monday, August 5th, when the men began to wear their union buttons.

Late in the day on that Monday, Huddleson, the general manager of respondent, did the unprecedented thing of calling all the warehousemen together for a meeting. He there announced that he had heard that the men had joined a union; that he understood the union rate to be 62½ cents an hour; that he could not permit a union in his plant because of competitive conditions; and that if they wanted higher wages they should have approached him without joining a union. He added that no one from the outside would tell him how to run his business; that he could have the work contracted out for less than he was then paying, and that the men could either go with the union or with him. He gave them "a couple of days to think it over". One of the warehousemen, in testifying to the inference drawn by the men from this speech, said that they gathered that "they could either throw away their union buttons or get fired".

The presence in the plant of Gomez, a labor contractor who had been seen inspecting the Santa Cruz and Stokely warehouses during the same day, indicates that Huddleson had already begun preparations to carry out his threat. On the following day Morris, foreman at the Stokely warehouse, pointed Gomez out to one of the warehousemen and said "that is the guy that is going to take over the contract".

Woods, the business agent of the union, who was notified by the men of Huddleson's ultimatum interviewed Huddleson on Tuesday, August 6. By that time Huddleson had received a draft copy of the standard contract which the union had negotiated with other large California canning firms for warehousing work, [48] embodying suggested terms of employment. The letter accompanying the tentative draft stated, "We desire that you give this proposal serious consideration and we are prepared to meet with you within the next few days for the purpose of discussing and arriving at a solution of an agreement." In his conversation with Woods, Huddleson recapitulated his position in substantially the same unequivocal terms saying that he "didn't want anything to do with a union or any of its officials * * *;" that "you couldn't have union activities around the place—it would cost too much money * * *; * * * Canneries were no place for a union—the hours wouldn't permit it and the wages wouldn't permit it * * *; * * * if they wanted to organize they could go somewhere else * * *" Upon his reiteration of the threat that he would turn the warehouse over to a contractor if the union came in, Woods requested the name of the contractor so that he could deal with him, but Huddleson declined to furnish the information and refused to state the reason.

The union meeting at which the men were to be initiated was to be held at eight o'clock Wednesday night, August 7th. At eight-thirty Wednesday

morning Anger requested Torenson, the Santa Cruz foreman, for permission for the day shift men to leave their work at four-thirty in order to attend the meeting. This ample period was necessary because most of the men lived a considerable distance from the plant and the union hall, and wished to go home to prepare for their initiation. Torenson thanked Anger for notifying him, saying "that would give him a change to arrange his work". At about noon Anger made the same request in respect to the night shift men and received the same answer. Hughes who was working near Anger at the time, testified that he overheard these conversations; Pepitone, another worker, also confirmed Anger's account; Rose and Resburg, day warehousemen, agreed that they saw Anger speaking to Torenson and were shortly thereafter told by Anger that Torenson had raised no objection to their leaving at four-thirty that evening. Early in the day after his encounter with Anger, Torenson asked Pio, Doyle and Sonnebeck (night men employed on the pork and bean line) if they were going to the meeting, and when they replied that they were, said that he would arrange to have them replaced in the meantime. He specifically stated that they were to return to work that night at the conclusion of the meeting.

During the afternoon a rumor spread through the plant that any of the men who went to the meeting would be discharged. In response to Anger's inquiry Torenson denied having made any such statement. Hughes confirms Anger's account of this exchange with the testimony that Torenson said that "Huddleson had told him to issue no order to the effect

that anyone going to the meeting would be discharged". In spite of Torenson's denial, however, further evidence of the fact that respondent had already formulated the design to lock the men out if they persisted in their union activities is found in the statement of Morris to one of the warehousemen, who replied in the negative to an inquiry as to whether he had a union button. Morris remarked, "Well, you are playing safe that way." He then added, "if you want to go on stacking cans you'll have to ask Gomez".

At four-thirty, when the men went to turn in their time cards, Torensen could not be found. They nevertheless departed, after leaving their cards on his desk. Although this was unusual, there is evidence that the men had left under these conditions before.

That evening *which* Reich, the assistant foreman in charge of the night shift, arrived at the plant at about five-twenty, Gomez was already in [49] the office and six or seven men from his crew were in the warehouse.* On discovering that Reich too was going to the meeting, Torenson observed "The old man gave us orders not to let anybody go to work who is going to that meeting."† However, Costa and

*Thirteen of Gomez's men punched in by six o'clock Wednesday night.

†Although Reich then went to the meeting he did not repeat Torenson's statement to the men. There is no evidence that Reich was instructed to inform them that their leave had been rescinded, and his silence is plausibly explained by the fact that, since Gomez was already in the warehouse a warning would have been of no avail.

Algrava, two other night shift men who were at the plant at about the same time, were merely told by Torensen that there was to be no night shift that day. When Algrava replied "Good, I want to go to the meeting anyway", Torenson made no comment. The testimony of Woods, business agent of the union, that the men at the meeting considered themselves absent from work with respondent's permission is borne out by the fact that the pork and bean gang returned to work that same night pursuant to Torensen's instructions, while the day crew reported at the usual hour the following morning.

The orderly procedure pursued by respondent's warehousemen in availing themselves of their legal right to organize contrasts vividly with the deliberately provocative tactics of respondent. In spite of the fact that the men had been instructed by Torenson to go to work immediately after the union initiation was concluded, respondent threw a cordon of guards armed with sawed-off shot-guns around the plant to confront its warehousemen on their return. When the pork and bean crew appeared at the warehouse about ten-thirty Wednesday night, they were met by guards with significantly exposed guns and the threat "We are going to have trouble around there. You had better go home." In reply to their protest that he had told them to return after the union initiation, Torensen said "I can't help it; that is orders". On Thursday morning the

day crew found the gates of the plant locked and the premises similarly guarded. One of the men who found his way in, was asked whether he had a "button", and when he responded that he had, was ejected by a Gomez guard. All of the warehousemen who had joined the union were thus locked out.

Respondent's contention that the men left the plant without permission, thus forcing Huddleson to take on a new force to complete the work, finds no support in the record. The testimony of the Santa Cruz men that Torenson gave them leave to go at four-thirty on Wednesday stands uncontradicted. Nothing appears in the record to offset the abundant evidence of Torensen's authority. The transparency of respondent's claim in this connection is sharply exposed by the fact that Orville Gardner, who on Tuesday had personally received Torenson's permission to take leave on Wednesday night merely because work was slack, was excluded from the plant with the others on Thursday. Respondent's contention lacks even the color of plausibility when applied to the men at the Stokely warehouse since they had completed their assignments at four-thirty. Respondent's contention advanced somewhat diffidently that the men struck, hardly merits consideration, so replete is the record with evidence that the men took all reasonable precautions to safeguard their jobs.

Respondent has interposed no claim that the men were generally inefficient; Huddleson, on the con-

trary, repeatedly asserted in his speech on Monday and in the course of the various negotiations following the lockout that their work was entirely satisfactory and offered to take them back if [50] they abandoned their union activities. In addition, the men's temporary absence while at the meeting on Wednesday night involved no disturbance in the operations at the plant. The day warehousemen had cleared the floor of cans for the day's run during the morning. Only one man was needed to trundle cans from the cannery to the warehouse and can stackers were available to take the place of the small night crew on the pork and bean line.

(b) The Union's Attempts to Secure Reinstatement of the Men.

Immediately after the lockout occurred, the union made at least four systematic attempts to have the men reinstated, under conditions similar to those which existed before the dispute began. Huddleson's and Gomez's reactions to the union's overtures indicate conclusively that the tactics of respondent were prompted originally by a determination to break the union and that Huddleson's offers of reinstatement were limited by the same design.

On Thursday morning, August 8th, after all of the men had been locked out, Woods attempted to see Huddleson. Huddleson could not be found, but Woods was told by Gomez that the union was the reason for the lockout of the men. Gomez unquali-

fiedly rejected Woods' suggestion that he employ the men himself. Several days later Anger and Woods again approached Huddleson but were categorically informed that he would never have anything to do with the union. At a subsequent conference between Woods, Huddleson and Jackson (of the Oakland Teamster's Union) Huddleson again revealed his anti-union bias by declining to reinstate the men on the ground that if he took them back the union might again make attempts to negotiate with him. Huddleson's refusal to reinstate the men at a later meeting with Woods, Jackson and Bridges (president of local 38-79 I. L. A.) was also explicitly based upon the fact that the union might reopen the question of wages and working conditions after the men had returned to work.

Respondent's "offers of reinstatement" were consistently vitiated by vagueness and arbitrariness as well as the imposition of conditions requiring complete capitulation by the union. Thus, Huddleson at one point asserted that he would re-employ all but six of the men who were out but when pressed for a more specific commitment as to the time of reinstatement, countered with the statements "when I have an opportunity to do so" and "when it is convenient to do so". The six men whom his "offer" did not cover were, he maintained, disqualified for reinstatement by their "disorderly conduct" after the lockout. The union's offer to arbitrate their

cases was categorically rejected.* In a letter to Mr. Real and Mr. Spooner (of the Central Labor Council of Alameda County) written August 31, 1935, Huddleson again offered to reinstate all but six of the men, with the same limitation: "we will reinstate the balance of these men . . . with the understanding that the organizers . . . will stay away from them and leave them alone . . ."

(c) Status of the Men at the Stokely Warehouse as Employees of Respondent.

Paragraph 3 of respondent's answer admits by implication the allegation in paragraph 3 of the Board's complaint that all of the warehousemen here involved are employees of respondent. In its brief, filed after the conclusion of the hearing, respondent for the first time raised the objection that "a few . . . of the complainants . . . were employees of Stokely Bros. . . . whose warehouse employees were paid by respondent's check and respondent was [51] reimbursed therefor each week by Stokely Bros." The particular warehousemen adverted to are not named in respondent's brief or in any evidence put in by respondent.

It is clear from the record, that respondent habitually, and sometimes daily, detailed its ware-

*While the answer alleges the violence of several of the men, respondent does not name them and no evidence appears in the record through which they can be identified. It is therefore unnecessary to discuss the bearing of violence committed by employees during the dispute upon the question of reinstatement.

housemen to Stokely when work at respondent's plant was slack, and that when Santa Cruz required additional hands the process was reversed. Thus, practically all of the men involved in the present inquiry had at some time worked at Stokely; Reich testified that the arrangement of the transfers was part of his ordinary duties as assistant foreman at respondent's plant. Gerald Olivera, Walter R. Bedford, John Valin, Fred Venturi and F. Ellis had worked principally at Stokely; we therefore infer that respondent's objection alludes to them.

Testimony introduced at the hearing establishes beyond dispute the fact that the five warehousemen in question were employees of respondent, and were so regarded by its chief officers and agents, although the preponderant portion of their activities were in the Stokely plant. Thus, Williams, assistant general manager of respondent, when questioned as to the number of respondent's employees, included these five warehousemen in his reply. The warehousemen at both the Santa Cruz and Stokely plants always received identical Santa Cruz checks. Williams admitted that Remington, the general superintendent of respondent, was in charge of employment at both the Stokely and Santa Cruz warehouses; that Morris, the foreman at Stokely who did the hiring and discharging, was under Remington's direct supervision; and that for all practical purposes the warehouse labor of both plants was run as a unit. This description of the unified management of the labor in both warehouses is unmistakably borne out by Huddleson's behavior in reference to the ware-

housemen at Stokely. On August 5th, the day on which Huddleson called the men together for his speech, Morris instructed the men to go over to Santa Cruz to hear him. Huddleson's declarations that he would not pay 62½ cents an hour and his threats that the men would be discharged if they persisted in their union activities were directed to the Stokely as well as to the Santa Cruz warehousemen. The Stokely warehousemen were locked out under the same circumstances as the Santa Cruz, as Morris had predicted, and though Gomez's contract with Huddleson nominally covered only the Santa Cruz plant, Gomez in fact took over Stokely as well as Santa Cruz after the lockout. Again, in all the negotiations for reinstatement, Huddleson failed to distinguish between the work at the Stokely and Santa Cruz warehouses, but offered to take back both the Stokely and Santa Cruz men indiscriminately. In his letter to Mr. Real and Mr. Spooner, the assumption that respondent's agent controls the labor at both warehouses and considers himself to be in a position to reinstate these men as well as those at Santa Cruz is also clearly apparent.

In view of respondent's habitual control and payment of these warehousemen we find that respondent is an independent contractor of warehouse labor for Stokely and that the five men here in question are employees of respondent.

(d) Concluding Findings of Fact on the Unfair Labor Practices.

By discharging from employment on August 7, 1935, and by thereafter refusing to reinstate Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by each of said discharges, respondent discriminated in regard to tenure of employment and has thereby discouraged membership in the labor organization known as the Weighers, Warehousemen and Cereal Workers 38-44. [52]

By such discrimination in regard to hire and tenure of employment and terms and conditions of employment, respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(3) Effect of Unfair Labor Practices Upon Commerce.

It was found above that the men here involved actually start all the products of respondent upon the course of transportation to their ultimate destination. Interruption of the performance of their functions involves necessarily an interruption of the steady and continuous flow of commerce from

by the history of the present labor difficulty. When respondent's warehousemen found themselves locked out on the morning of August 8, 1935, they immediately formed a picket line, which was maintained until September 27, 1935, with such effectiveness that eventually the movement of trucks from warehouse to wharves ceased entirely. The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their reloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move "hot" Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo.

Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the canning industry have habitually had the effect of impeding the movement of canned products into interstate and foreign commerce. Thus official statistics of the United States Department of Labor on labor disputes in the canning and preserving industries indicate that of the fifteen strikes and lockouts in the industry in 1934 and the first half of

1935 eight were the outcome of difficulties in regard to union recognition and discrimination for union activities. 7,484 workers were involved in these stoppages, 2,581 of them in disputes concerning such union issues. 67,597 man-days of potential productive activity were lost to the industry, of which a total of 58,109 was owing to disputes in connection with organization matters.

The aforesaid acts of respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

(4) The Contract with Gomez.

In accordance with its threat, respondent entered into an agreement with Gomez covering all the warehouse work at the Santa Cruz plant. The contract is dated August 1, 1935 and is nominally for a one year period, with an option of renewal in the contractor. This contract raises some question as to the nature of the appropriate order in this case. The evidence permits no doubt that respondent's motive in contracting out its warehouse work was prompted solely by a determination to eliminate the union from its plant at any cost. The decision in this case does not in the least imply the validity under the Act of such a contract entered into with such a motive. Circumstances peculiar to the instant case make it unnecessary, however, to decide the extent of the remedy which the Board may afford victims of unfair labor practices in this type of situation. The record here before the Board contains irrefutable evidence that respondent did not consider itself

precluded by its contract with Gomez from reinstating the men within the period covered by the agreement. At his meeting with Bridges, Woods and Jackson, Huddleson stated, "I am not in a position to put the other men back in the warehouse, [53] because I am not going to tell this man that has a contract with us to go and let his men go, and take the others back in their places . . . I will take them back as I can work them in and as I see fit." It is apparent, in view of the latter statement, that Huddleson could reinstate the men if he wished to do so. It may plausibly be inferred that Huddleson's offer, if it was to be meaningful under the circumstances, contemplated action before the expiration of the contractual one or two years period. This implication becomes more compelling in view of the fact that Huddleson's refusal (later in the conversation) to arbitrate his differences with the union with reference to reinstatement of the men was due to his failure to receive assurance that the union would desist from attempts to alter labor conditions in his warehouse after the men returned to work, rather than to his obligations to Gomez. Huddleson's letter of August 31, 1935 to Mr. Real and Mr. Spooner of the Central Labor Council of Alameda County establishes conclusively the fact that respondent, regardless of its contractual relation to Gomez, considers itself able to reinstate the men here involved. The relevant portions of the letter read as follows:

> "As explained to you, there are 38 men out at the present time and I understand that prac-

tically all of them would like to return to this plant under the same conditions under which they were working before they left.

This is to advise that, outside of 7 men whose conduct is such that we do not wish to have them in the organization, we will reinstate the balance of these men at the rate of 10 men a week until we have them back at work in this organization with the understanding that the organizers, who caused them to make a demand on us for approximately 22½¢ an hour more than is given by other people in this industry, stay away from them and leave them alone. In other words, when they come back here, they are to come back under exactly the same conditions that they were working under before they left."

We find that respondent in spite of its alleged contract with Gomez is in a position to reinstate the warehousemen involved in this case.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

(1) The Weighers, Warehousemen and Cereal Workers Local 38-44 is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

(2) Respondent, by discriminating in regard to the tenure of employment of Ernie Reich, George

Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, (Gardner), Frank Freitas, Larry Doyle, Jack Baker, and each of them, has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

(3) Such unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. [54]

ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Santa Cruz Fruit Packing Company, and its officers and agents, shall:

1. Cease and desist:

   (a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for join-

ing Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling,

August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge; [55]

(c) Post immediately notices to its employees in conspicuous places in various offices, stating (1) that respondent will cease and

desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

Signed at Washington, D. C., this 2nd day of April, 1936.

J. WARREN MADDEN
Chairman
JOHN M. CARMODY
Member
EDWIN S. SMITH
Member

[Seal] National Labor Relations Board

[56]

[Title of Court and Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Kenneth Ayres being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 2d day of April, 1936, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision to the following named persons, addressed to them at the following addresses:

De Coto and St. Sure, Financial Center Bldg., 14th and Franklin St., Oakland, Calif.

Sam Kagel, Esq., 85 Clay St., San Francisco, Calif.

KENNTH R. AYRES

Subscribed and sworn to before me this 2d day of April, 1936.

[Seal] JOHN E. LAWYER
Notary Public, District of Columbia

My commission expires September 8, 1939.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

DECOTO & Sr. SURE
(Signature or name of addressee)
OLIVE A. BLEDSOE
(Signature of addressee's agent)

Date of delivery Apr. 6, 1936.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

SAM KAGEL
(Signature or name of addressee)
S. A. MELNICOE
(Signature of addressee's agent)

Date of delivery Apr. 6, 1936. [57]

In United States Circuit Court of Appeals
For the Ninth Circuit

No. .....

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

SANTA CRUZ FRUIT PACKING COMPANY,
Respondent.

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before the Board entitled "In the Matter of Santa Cruz Fruit Packing Company and Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association", the same being case No. C-51 before the said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in the said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, September 27, 1935.

2. Copy of complaint and notice of hearing issued by National Labor Relations Board November 2, 1935.

3. Copy of order of National Labor Relations Board designating Henry Eickhoff, Jr., as Trial Examiner, dated November 1, 1935. [58]

4. Copy of respondent's answer to complaint, verified November 8, 1935.

5. Copy of amended complaint and notice of hearing issued by National Labor Relations Board November 14, 1935.

6. Copy of order of National Labor Relations Board designating Roger J. Traynor as Trial Examiner in place and stead of Henry Eickhoff, Jr., dated December 17, 1935.

7. Stenographic report of hearing before Roger J. Traynor, Trial Examiner for National Labor Relations Board, on December 23 and 24, 1935 and January 2, 3 and 6, 1936, including all exhibits or copies thereof introduced in evidence.

8. Copy of intermediate report of Trial Examiner Roger J. Traynor, dated January 30, 1936.

9. Copy of respondent's exceptions to intermediate report, filed February 10, 1936.

10. Copy of decision, findings of fact, conclusions of law and order of National Labor Relations Board, dated April 2, 1936, together with affidavit of service and United States Post Office return receipts.

In testimony whereof, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 19th day of December, 1936.

[Seal] /s/ BENEDICT WOLF
Secretary
National Labor Relations Board

[59]

[Endorsed]: No. 8432. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Santa Cruz Fruit Packing Company, a corporation, Respondent. Transcript of Record. Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

Filed January 4, 1937.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

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PAGE

No. 8432

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
Respondent.

Upon Petition for the Enforcement of an Order of the National Labor Relations Board

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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At a stated term, to-wit; The October Term, A. D. 1936 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourth day of January in the year of our Lord one thousand nine hundred and thirty-seven.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable Francis A. Garrecht, Circuit Judge, Honorable William Denman, Circuit Judge.

No. 8432

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
a Corporation,
Respondent.

ORDER GRANTING LEAVE TO FILE PETITION FOR ENFORCEMENT, ETC.

Upon consideration of the petition of National Labor Relations Board for leave to file petition for enforcement of certain order of said petitioner issued on April 2, 1936, in certain proceeding theretofore instituted by petitioner against respondent above named, and it appearing that petitioner is en-

titled to petition this Court, for the enforcement of said order, and that petitioner has prepared, certified and presented to the clerk of this court for filing a complete transcript of the entire proceedings had by and before petitioner,

Now, Therefore, It Is Hereby Ordered that petitioner herein be, and it is hereby allowed and given consent to file said petition and transcript of proceedings with the clerk of this court, and to docket said petition in this court.

And It Is Further Ordered that the petition for enforcement of said order be heard in this court upon the typewritten transcript of proceedings and record, without the necessity of having such transcript of record printed, but that counsel for the respective parties shall print in their briefs such portions of the pleadings and testimony as they desire to call to the attention of the court, in an appendix to such briefs.

And It Is Further Ordered that said briefs be prepared and printed in accordance with requirements of Rule 24 of the Rules of this Court; the brief for petitioner to be served and filed on or [61] before February 15, 1937, the brief for respondent to be served and filed within thirty days after receipt of a copy of petitioner's brief, and petitioner is privileged to serve and file a reply brief, if so advised, within fifteen days after receipt of a copy of respondent's brief, and thereafter this cause will be assigned for hearing at the direction of the Court.

And It Is Further Ordered that the matter of the liability for cost of printing the portions of the

record so selected shall not be governed necessarily by the present rule, but shall be hereafter determined. [62]

In the United States Circuit Court of Appeals
for the Ninth Circuit

October Term 1936—No. 8432

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

SANTA CRUZ FRUIT PACKING COMPANY,
a Corporation,
Respondent.

PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 29 U. S. C. Sec. 151 et seq.), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a pro-

ceeding instituted by it against respondent, Santa Cruz Fruit Packing Company. Said proceeding is known upon the records of the Board as case No. C-51, the title thereof being "In the Matter of Santa Cruz Fruit Packing Company, a Corporation, and Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association".

In support of this petition, the Board respectfully shows:

(1) Respondent, the Santa Cruz Fruit Packing Company, is and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the State of California, and has and maintains places of business and transacts business at the cities of Oakland and Seabright in the State of California. [63]

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act.

(3) A charge having been duly filed with the Regional Director of the National Labor Relations Board for the Twentieth Region on the 27th day of September, 1935, by Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, the Board, on the 2nd day of November, 1935, issued its complaint in said proceeding alleging that respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint,

together with a notice of hearing thereon, was duly served upon respondent. Thereafter, on November 8, 1935, respondent, Santa Cruz Fruit Packing Company, duly filed its answer to said complaint.

(4) Thereafter, on November 14, 1935, the Board issued its amended complaint alleging that respondent is engaged in foreign as well as interstate commerce.

(5) Thereafter, on December 23 and 24, 1935, January 2, January 3 and January 6, 1936, the Board by a Trial Examiner, duly held hearings upon said complaint, pursuant to due notice thereof. At said hearings it was stipulated by the parties that respondent's answer would apply to the complaint as subsequently amended as aforesaid. At said hearings full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties, and testimony and other evidence with respect to the allegations stated in said complaint was adduced by the Board. Following the Board's presentation of its case respondent offered no testimony but moved to dismiss said complaint on the grounds that the Board had no jurisdiction over respondent, and that the Board had failed to prove the allegations of said complaint. The Trial Examiner denied respondent's motion, and at the close of the hearings briefs were filed by respondent and by counsel for the Board. [64]

(6) Thereafter, on January 30, 1936, in accordance with the Rules and Regulations of the Board, the Trial Examiner filed with the Regional Director

of the Board for the Twentieth Region an intermediate report containing findings of fact and recommendations, which said intermediate report was duly served upon respondent. Thereafter, respondent filed with said Regional Director exceptions to said intermediate report

(7) Thereafter, on the 2nd day of April, 1936, the matter having come before the Board for determination, and the Board having duly considered the matter, including the said intermediate report and exceptions thereto, and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent:

"ORDER

"On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Santa Cruz Fruit Packing Company, and its officers and agents, shall:

1. Cease and desist:

(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by

discharging or threatening to discharge any of its employees, for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own [65] choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bed-

ford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Toreson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Frank Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge;

(c) Post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting."

(8) The said order was duly served upon respondent and is, and at all times since its said issuance and service has been, in full force and effect.

(9) Respondent has not complied with the order of the Board heretofore set out in paragraph (7), and, upon information and belief, respondent will not comply with said order unless and until required so to do by this Court.

Wherefore the National Labor Relations Board petitions this Honorable Court for the enforcement of its said order of April 2, 1936, made and entered against the Santa Cruz Fruit Packing Company, the respondent herein; and pursuant to Section 10(e) of [66] said National Labor Relations Act, certifies and files with this petition the transcript of the entire record and the proceedings before the Board, including the pleadings, testimony and evidence upon which such order was entered, and the findings of fact and said order of the Board.

The National Labor Relations Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, as provided by Section 10(e) of said National Labor Relations Act, and that this Court take jurisdiction of the proceeding and of the questions determined therein, and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in such transcript, and upon the said order made thereupon, a decree enforcing in whole said order of the Board and requiring re-

spondent, its officers, agents and representatives, to comply therewith.

/s/ J. WARREN MADDEN
Chairman
/s/ DONALD WAKEFIELD SMITH
Member
/s/ EDWIN S. SMITH
Member
National Labor Relations Board

/s/ CHARLES FAHY
General Counsel,
National Labor Relations Board,
Washington, D. C.

/s/ ROBERT B. WATTS
Associate General Counsel,
National Labor Relations Board,
Washington, D. C. [67]

District of Columbia,
City of Washington—ss:

J. Warren Madden, Edwin S. Smith, and Donald Wakefield Smith being first duly sworn, depose and say that they are chairman and members, respectively of the National Labor Relations Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the

statements made in the foregoing petition are true to the best of their knowledge and belief.

/s/ J. WARREN MADDEN
Chairman

/s/ DONALD WAKEFIELD SMITH
Member

/s/ EDWIN S. SMITH
Member

National Labor Relations Board

Subscribed and sworn to before me this 19th day of December, 1936.

[Seal] /s/ JOHN E. LAWYER
Notary Public, District of Columbia

My commission expires September 8, 1939. [68]

RETURN ON SERVICE OF WRIT

United States of America,
Northern District of California—ss:

I hereby certify and return that I served the annexed Order Granting Leave to File Petition for Enforcement, Etc. on the therein-named Santa Cruz Fruit Packing Company, a Corporation, Respondent, by handing to and leaving a true and correct copy thereof with Paul St. Sure, Attorney for Re-

spondent, personally at Oakland, California, in said District on the 7th day of January, A. D. 1937.

GEORGE VICE
U. S. Marshal.
By J. R. CUNNYNGHAM
Deputy.

Marshall's Fees

Travel	$ .72
Service	2.00
	$2.72

[Endorsed]: Received Dec. 31, 1936. Filed Jan. 12, 1937. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit.

Excerpt from Proceedings of Wednesday, May 5, 1937.

Before: Wilbur, Denman and Haney, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered petition to enforce an order of the National Labor Relations Board in above cause argued by Mr. Philip Levy, Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. J. Paul St. Sure, counsel for respondent, and submitted to the court for consideration and decision.

[70]

United States Circuit Court of Appeals
for the Ninth Circuit.

Excerpt from Proceedings of Saturday, July 31, 1937.

Before: Wilbur, Denman and Haney, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION, CONCURRING OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF ORDER.

By direction of the Court, Ordered that the typewritten opinion, concurring opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the Clerk and an order be filed and entered in the minutes of this Court in accordance with the opinion and concurring opinion rendered. [71]

[Title of Court and Cause.]

Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

OPINION

Before: Wilbur, Denman and Haney, Circuit Judges.

Denman, Circuit Judge:

The National Labor Relations Board by its orders of April 2, 1936, required the respondent to "Cease and desist:

> "(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and
>
> "(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

"(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives [72] of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.",

and to take affirmative action, which the Board finds "will effectuate the policies of the Act", (a) to offer to several discharged employees "immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed"; and (b) to make whole said discharged employees "for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge"; and to "post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting".

The Board has filed its petition in this court for the enforcement of the orders. Respondent Packing Company appears and contests the enforcement.

The respondent admits it is engaged in the canning and packing of fruits and vegetables, 39% of which are processed to be sold to persons in other states and foreign countries and shipped to them there. Its total pack in 1935 was in excess of 1,600,000 cases. It consisted of tomatoes and tomato products, peaches, apricots, spinach, pears, asparagus, and pork and beans, in volume, in the order named.

The respondent, relying solely on the unconstitutionality of the Labor Relations Act and the proceedings of the Board, does not question that the employees were dismissed by it because some of them had engaged in the formation of the Local of the union in question and all had joined it. Upon the lockout, the Local caused the Oakland plant to be picketed. Violence ensued, causing hospitalization of some of the participants. The product of the plant was declared "hot" and other locals of unions —teamsters, [73] dock clerks, scalers, seamen, and longshoremen—failed or refused to handle it. Blacklisting of respondent's products was attempted.

The Board found that the "bulk of" the agricultural products processed by the respondent came from the State of California and the respondent contends, and we accept the contention, that substantially all of the products were produced by growers in the state. Respondent further contends, and we agree with the contention for the purposes

of this decision, that the processing of the respondent, including the loading of its product in cars, is an intrastate activity as that is held to be in the Coe v. Errol case (116 U. S. 517, 518, 525).

The contention also was raised that under the agreements for the sale of the products, title was transferred to the purchaser prior to the actual entry of the goods into carriage by an interstate carrier, which contention we also accept for the purposes of this decision.

It appears that the respondent had two plants: one at Oakland, California, known as the "Santa Cruz plant" and one at Seabright, near Santa Cruz, California. The case as presented here concerns only the employees engaged at the Oakland plant and there is no showing that any of the products of the Seabright plant ever left the State of California.

We hold that so far as concerns the manufacture and shipping activities of the respondent and its employees at the Oakland plant, the labor dispute leading to the discharge of the employees, the declaration of the products as "hot", and the sympathetic refusal of other unions to handle them, "throttled" the flow of interstate commerce and "put in jeopardy" its future flow, to the extent of 39% of respondent's products manufactured to be shipped into that commerce.

The respondent relies on the decisions of Carter v. Carter Coal Co., 298 U. S. 238; United Mine Workers v. Coronado Coal Co., 259 U. S. 344;

Oliver Mining Co. v. Lord, 262 U. S. 172, and others holding that manufacture, lumbering, and mining processes, including the loading on to the cars of the product, and all activities up to actual movement out of the state, as in the Coe case, constitute intrastate production. Hence, the respondent contends, the Labor Relations Act is an attempt by the Congress to control the labor relations in such an intrastate activity and [74] violates the provisions of the Tenth Amendment to the Constitution.

The questions for our solution are:

(1) Is the Carter v. Carter Coal Co. decision overruled by the decision of the Supreme Court in National Labor Relations Board v. Jones & Laughlin Steel Corporation, 81 L. ed. 563, so far as the former holds that the Constitution gives no power to the Congress to regulate intrastate production and manufacture of goods with respect to its labor disputes, which diminish or throttle the flow of goods intended to be and which would be shipped into interstate commerce?

(2) Granting the Congress has such power, can it be exercised where 39% of the goods produced by the labor employed are shipped in interstate commerce and 61% remain within the state of manufacture?

(1) Carter v. Carter Coal Co. and similar cases are overruled by National Labor Relations Board v. Jones & Laughlin Steel Corporation.

Respondent's contention that the Carter case is not overruled by the Jones & Laughlin decision is squarely presented to this court and it would be

an evasion of our judicial obligation to deny it a full consideration or attempt to evade it by asserting that it is here "not controlling".

Three Circuits, the Second, Fifth, and Sixth, relied upon the principle established in the Carter case in holding that the National Labor Relations Act was unconstitutional. National Labor Relations Board v. Friedman-Harry Marks Clothing Co., (CCA-2) 85 Fed.(2) 1, 2; National Labor Relations Board v. Jones & Laughlin Steel Corp., (CCA-5) 83 Fed.(2) 998, 999; Fruehauf Trailer Co. v. National Labor Relations Board, (CCA-6) 85 Fed.(2) 391, 392.

In all three of these cases there was an antecedent import of raw materials entering into the production, over which the Labor Relations Board asserted the right to regulate the employer and employee. Here, the respondent asserts, is a case identical with the Carter Coal case, in what, it insists, is the controlling fact that, as in mining coal, both the fruit and vegetables and the canned and packed product are produced in the state. [75]

It is patent that the Carter case is identical in fact and relevant principle with that of respondent.

Unless overruled it clearly is controlling in so far as it denies the constitutional right of the Congress to regulate labor disputes affecting substantially the volume of a manufacturer's output which is "to be" transported in interstate commerce and which may be throttled from that transport and

ultimate sale in another state unless so regulated.

Great stress is laid on the fact that the Congress has not before exercised such a power over labor relations in production of goods to be transported into interstate commerce. It is argued that if it may regulate labor disputes because it will affect the volume of goods to be transported in interstate commerce, it may regulate the volume itself of, say, shoes or clothing or furniture or food products, or the material used in the construction of housing, produced for use in other states. It is urged that all such production generally has been conceived as a matter of state control, and there are pointed out dangers of political control of such matters by bureaus in Washington. It is suggested that the Constitution was framed to meet a pioneer agricultural economy in which nearly everything consumed was grown or made on the farms or in the neighboring towns. Hence it is further urged that the framers of the Constitution never would have lodged in the Congress its powers over interstate commerce if it had envisioned an economy in which practically all the clothing we judges wear, every object contained in the chambers in which we sit, and the major part of the material entering the construction of the building in which the court is housed, come from some state other than California.

The answer to these contentions we have made in our decision in Edwards v. U. S., No. 8386, decided by this court on July 22, 1937. It is that the Carter case is overruled by the Jones & Laughlin decision;

that the Constitution did give the Congress the power so to regulate interstate commerce; and that that power is plenary as to all productive activities which substantially affect or tend to throttle the volume of goods to be transported in commerce outside the state of production.

Conventional historic attitudes towards states' rights are highly important in the political world when faced with the practica- [76] bility of novel proposals of the exercise of congressional power. It may or may not be politically wise at any particular time for the Congress to proceed with caution, but this in no way concerns the judicial question of the extent of the power. To refrain from or to hesitate in decision when the question is fairly presented well may cause the paralysis and frustration of efficient legislative and executive action.

The reasoning and holding of the Edwards case, supra, answers in the negative the first of respondent's contentions.

(2) The specific Constitutional grant of power to the Congress by Article I, section 8, to regulate commerce among the states and with foreign nations is paramount to the exercise by the states of the power of regulation of the intermingled intrastate commerce, included in the general reservation of state powers by the Tenth Amendment.

Hence, if any substantial percentage of a product produced in a state is produced to enter interstate or foreign commerce, the Congress may regulate its

production, in so far as it affects the volume to enter such commerce, though such regulation also regulates a larger percentage of product which does not leave the state.

Section 8 of Article I of the Constitution makes a specific grant of power over interstate commerce. The Tenth Amendment is a general reservation of all powers not granted. There is no limit placed on the grant, no proviso that because the states also have exercised certain powers over manufacture and other production, the Congress is to be in any way hampered in the full exercise of its regulation. The Supreme Court has repeatedly held the contrary.

Construing the general reservation of state powers by the Tenth Amendment, as affected by the specific grant of power to regulate interstate commerce of Article First, paragraph 8, of the Constitution, the Supreme Court held:

> "This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to [77] every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the comingling of inter-

state and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

The Minnesota Rate Case, 230 U. S. 352, 399.

The Jones & Laughlin case holds that the disorganization and disturbance of labor affecting interstate commerce does not have to be of railway employees to bring it within the control of Congress. The interference as well may come from labor conditions in the intrastate business entirely different from transportation.

"The opinion in that case [Virginia R. C. v. System Federation, 81 L. ed. 470] also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is *not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy,* from the case of employees of transportation companies. And of what avail is it to protect the facility of

transportation, if interstate commerce is throttled with respect to the commodities TO BE transported." (Emphasis supplied.)

National Labor Relations Board v. Jones & Laughlin S. Corp., 81 L. ed. 563, 578.

The Shreveport case, 234 U. S. 342, relied upon by the Supreme Court for its decision in the Jones & Laughlin case, holds that a company, by the rate charge of its intrastate business, may affect the rates of its interstate business in such a way that the intrastate business rate come within Congressional regulation. The fact that both of the businesses happen to be transportation is not relevant.

[78]

The analogy between the Shreveport case and the Santa Cruz Fruit Packing Co. is complete. In each the conduct of the intrastate business, the one as to its rates and the other as to its labor, affects the interstate business arising from the activities of the respective companies. In one this is accomplished by producing an unfair rate upon the commodities "to be" transported, and in the other by throttling the interstate business in the commodities "to be" transported. In both the intrastate business puts "in jeopardy" the proper and fair conduct of the commerce among the states. The acceptance by the Supreme Court of the doctrine of the Shreveport case again demonstrates the overruling of the Carter case.

The Shreveport case does not determine the right of Congress to control the intrastate activity in rate

making upon any ratio between the volume of business under the intrastate rates and under the interstate rates. In the Jones & Laughlin case no significance is attached to the fact that 75% of the steel and other manufactured products entered interstate commerce, or that but 25% of intrastate manufacture was regulated.

Respondent is the fifth or sixth largest of the California companies processing and packing fruits and vegetables. The 39% of its business which enters into interstate commerce is a sufficiently substantial amount to warrant the Congress to make effective its regulation, even though thereby the 61% which is intrastate business is regulated with reference to labor disputes. The intermingling of the two activities does not take from the Congress the right to regulate that substantial portion over which the Constitution has specifically granted the control to the Federal government.

The suggestion that we should make an academically arbitrary 50% as the boundary line between the two jurisdictions ignores the practical necessities of industry. Shall it be 50% in volume or price? What happens when for the first 6 months of the year 60% is exported, and 40% is domestic, and for the rest of the year the percentages are reversed? Does the Federal control end on June 30th? On which is the burden of proof, the state interest or the Federal? How unfair may be the competition between the industry producing the 60% for export

under Federal regulation and its competitor with 40% under state regulation or no regulation at all! [79]

Industry and business cannot thrive, in some cases it could not exist, in the uncertainty of such an abstract mathematical solution of the problem. It cannot be inferred that the Congress intended to create a situation so confusing alike to employer and employee.

What are the sufficient minima of producers' contributions to the flow of commerce to warrant congressional regulation must be decided as the questions arise. We have no doubt that the Santa Cruz Company's contribution, both as to volume added to interstate and foreign commerce and percentage of its output is "affecting commerce" within the meaning of the Act.

We therefore hold that the Constitution granted to the Congress the power to regulate respondent's labor relations with reference to all of its employees at its Oakland plant engaged in the production of canned and packed fruits and vegetables, the processing of 39% of which was intended for interstate commerce and had been throttled for a considerable period from entering that commerce, although the remaining 61% remain within the state of production.

The Board's orders to cease and desist applied to all of the employees of the respondent, but the evidence shows no shipments by respondent into interstate commerce from its Seabright plant. The or-

ders should be modified to apply only to the employees of the Oakland plant; otherwise they should be enforced.

The orders of the National Labor Relations Board, so modified with respect to confining their effect to the employees of the Oakland plant of the respondent, are ordered enforced. [80]

Haney, Circuit Judge, Concurring.

I concur.

I believe Carter v. Carter Coal Co., 298 U. S. 238, was in effect overruled by Nat. Labor Rel. Bd. v. Jones & Laughlin Steel Corp., decided by the Supreme Court April 12, 1937, though it is true that no words are contained in the opinion in the latter case which indicates that the Carter case was formally considered to be overruled. It is merely stated that the Carter case is "not controlling".

What then is the controlling factor to be considered in connection with the jurisdiction of the Board? In the Jones case, the Supreme Court quoted §10(a) of the act conferring jurisdiction on the Board, and then stated: "The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are 'affecting commerce'." The definition of "commerce" in §2(6) of the act makes no attempt to define interstate or foreign commerce. The word "definition" as applied to commerce in said section is a misnomer in a sense. The [81] only part thereof which may be called a definition, is the portion that restricts the broad meaning to "interstate and for-

eign commerce in the constitutional sense", but the section makes no effort to determine or define such commerce in that sense. I am unable to find anything in the Jones case which defines anew "interstate commerce". Were it necessary to make such a definition, I believe the inference which might properly be taken from the Jones case is that anything which either starts or aids the flow of the stream is interstate or foreign commerce. As applied here, the beginning of the flow would be traceable to the planting of the seed. Successive stages would consist of the planting and growing, sale and delivery to respondent, the canning, the shipment in interstate commerce, and each step thereafter until the product reached the hands of the consumer and was consumed by him. Each step would be a part of the stream. Such an interpretation is what I believe to be the intent of the words as used in the Constitution.

However, I do not believe the Supreme Court made such a definition, because under its construction of the act, a new definition is unnecessary. The Board, by the act, is given jurisdiction over an unfair labor practice "affecting commerce" as defined in §2(7). The cases depend on this provision. The Supreme Court construed this provision, as follows:

> "This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and

employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes * * * *It is the effect upon commerce, not the source of the injury which is the criterion* * * * Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control and hence [82] to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise * * *" (Italics supplied).

Thus it is quite plain that we are to consider only one thing, i.e., the effect of the unfair labor practice on interstate commerce. But it is pointed out in the Jones case that the effect on interstate commerce, of the unfair labor practice must be direct and immediate and not indirect and remote, the court saying:

"* * * Undoubtedly the scope of this power must be considered in the light of our dual sys-

> tem of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government * * * The question is necessarily one of degree * * *"

The rule is like the ones relating to a state tax on an instrumentality of the federal government or on an instrumentality of interstate commerce, and a federal tax on an instrumentality of state government. I believe all of them are based on the modification of the rule in McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316, by Banks v. Supervisors, 74 U. S. (7 Wall.) 26, 29 and in National Bank v. Commonwealth, 76 U. S. (9 Wall.) 353, 361. All of these rules, although theoretically sound, are unwise in a practical sense. No gauge has ever been made by which a given effect may be determined to be either direct or remote. As a result we have speculation and uncertainty. Compare the dissenting opinion in Brush v. Commissioner, decided by the Supreme Court on March 15, 1937.

However in the instant case applying that rule, it is plain to see that interstate commerce is obstructed, because production of goods was halted by the unfair labor practice. I do not believe that it is important whether 98% of respondent's production or only 1% of it, actually moved in interstate com-

merce. So long as 1% of the goods so moved, the unfair labor practice obstructed the movement to that extent. The effect would therefore be direct and immediate. [83]

Wilbur, Circuit Judge, dissenting:

I dissent.

The Supreme Court having decided in National Labor Relations Board v. Jones & Laughlin Steel Corp., 57 S. Ct. 615, and in the companion cases (N. L. R. B. v. Friedman-Harry Marks Clothing Co., 57 S. Ct. 645; N L. R. B. v Fruehauf Trailer Co, 57 S Ct. 642; Washington, Virginia & Maryland Coach Co v. N. L. R. B., 57 S. Ct. 648; Associated Press v. N. L. R. B., 57 S. Ct. 650) that the regulatory power of Congress under the Interstate Commerce clause of the Constitution extends to the protection of the collective bargaining system between employer and employee in those industries whose products enter so largely into interstate commerce that a strike of the employees preventing production would directly affect interstate commerce, it is necessary to apply the principles enunciated in those cases to the case at bar.

In considering the interpretaion of the federal Constitution it is quite true that the founders of our government did not realize the changes which would come by reason of the increased facilities for interstate communication and business such as the railroad, steamboat, airplane, telegraph, telephone and radio. While these increased facilities have not changed the Constitution or its meaning they have vastly extended its application. The framers [84]

of the Constitution probably never suspected that profanity whispered into a microphone in Portland, Oregon, would be heard around the world and thus bring that subject under federal control. (Duncan v. U. S., 48 F.(2d) 128) No one now questions the right of Congress to legislate concerning this vastly wider field. Laws regulating radio communication and airplane traffic have been accepted as a matter of course because they clearly relate to interstate commerce. The Constitution has not changd in that respect, it has not grown. It is interstate commerce which has grown. The activities of the people, however, in engaging in such interstate enterprises have brought them under the regulatory power of Congress under the federal Constitution.

In the Jones & Laughlin case, supra, it is pointed out that when industries organize themselves on a national scale so that interstate commerce is a necessary factor of their activities, they are subject to regulatory power of Congress under the commerce clause of the federal Constitution.

It is our duty to support the Constitution of the United States as interpreted by the Supreme Court. It is therefore of the utmost importance in this case to ascertain what the Supreme Court has decided with reference to the constitutionality and applicability of the Wagner Labor Relations Act and to apply that conclusion to the factual situation presented in the case at bar.

The Supreme Court did not lay down any definite general rule upon the subject. It did hold, as to

particular industries considered in the Jones & Laughlin case and companion cases, that Congressional power extended to the protection of collective bargaining in the plants of the employers there involved.

In the Jones & Laughlin Steel Corporation case, supra, 75% of the product is shipped out of Pennsylvania. It is one of the four largest producers of steel in the United States. In the trailer case (N. L. R. B. v. Fruehauf, 57 S. Ct. 642, supra) 50% of the material used was imported from other states, 80% of the product was shipped outside the state. In the clothing case, (N. L. R. B. v. Friedman, 57 S. Ct. 645, supra) 99.57% of the goods came from other states, 75% being purchased in New York alone, 82.8% of the output purchased by customers outside the state. [85]

None of these cases approximate the condition presented in the case at bar. All of them dealt with cases in which a large part of the raw material manufactured by the employers was imported into the state for the purpose of manufacture and was in fact exported from the state after manufacture. In the case at bar we have the defendant engaged in preparing homegrown products for the market knowing that according to its usual business 39% of that product would enter into interstate or foreign commerce. The grower who produces the fruit does not know what part of his fruit, if any, will enter into interstate commerce. He sells it to the

respondent knowing, perhaps, that 39% of the product of the cannery will enter into foreign or interstate commerce. The cannery does not segregate its employees into groups, some working upon material to enter into interstate and foreign commerce, and others upon material to be sold in intrastate commerce. There is no segregation of the product at any time until after the cannery and warehousing operations are completed.

The decision of the Board is predicated upon the proposition that a strike might result if collective bargaining were denied and that if such a strike occurred it would directly affect interstate commerce by shutting off production. That decision, assuming jurisdiction over the respondent's entire Oakland and Seabright plants so far as collective bargaining is concerned, is not predicated upon any clear line distinguishing between the employees working in the plant as to the character of the work performed but is based on the theory that inasmuch as 39% of the product finds its way in interstate commerce a restriction of the output of the plant would diminish the amount of material entering into interstate commerce pro tanto. There is no evidence to support this conclusion other than the assumption that the business would be divided in the same way whether the amount of the product was great or small. None of the cases decided by the Supreme Court went as far as does this decision of the Board. Not only was most of the raw material of the employer in those cases imported from outside the state, but in each case more than 75% of the result-

ing product entered into interstate and foreign commerce. Here we have none of the products from outside the state and less than half the product entering interstate commerce. As the cases decided by the Supreme Court are not directly applicable because the facts differ, [86] we turn to the reasoning by which the majority of the Supreme Court reached its conclusion to see if such reasoning is applicable or decisive herein.

Taken broadly the logic of this reasoning would justify the conclusion of my associates, but the majority of the Justices of the Supreme Court, as well as the minority, foresaw the danger that the opinion, pressed to its logical conclusion, might result in leaving to the sovereign states only the empty hull of government and admonished that in applying these decisions we must not only consider as a factor in the problem the direct effect upon interstate commerce of the collective bargaining system, but must also consider as a factor the authority of the state over its domestic concerns expressly and impliedly reserved by and to them by the Constitution. In that regard I quote from the opinion of the majority, written by the Chief Justice, as follows: (57 S. Ct. 624:)

"Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create

a completely centralized government. id. The question is necessarily one of degree. As the Court said in Board of Trade of City of Chicago v. Olsen, supra, 262 U. S. 1, 37, 43 S. Ct. 470, 477, 67 L. Ed. 839, repeating what had been said in Stafford v. Wallace, supra: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it'."

The minority of the court, upon this subject, say:

"It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had [87] better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

This danger was pointed out by the Supreme Court in Kidd v. Pearson, 128 U. S. 1, cited by the minority of the Supreme Court in the dissenting opinion in the Jones & Laughlin case. The court there said: (57 S. Ct. 638)

"'If it be held that the term [commerce with foreign nations and among the several states] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining,—in short, every branch of human industry.'"

Nearly a half century ago, in the case of Kidd v. Pearson, 128 U. S. 1, supra, the Supreme Court held that a state could prohibit the manufacturing of intoxicating liquor within its borders notwithstanding such liquor was intended for transportation to other states, and was manufactured for that purpose. The Court stated:

"It is true that, notwithstanding its [the state prohibition statute] purposes and ends are restricted to the jurisdictional limits of the state of Iowa, and apply to transactions wholly internal and between its own citizens, its effects may react beyond the state by lessening the amount of intoxicating liquor exported. But does it follow that, because the products of a domestic manufacture may ultimately become the subjects of interstate commerce at the pleasure of the manufacturer, the legislation of the state respecting its manufacture is an attempted exercise of the power to regulate commerce exclusively conferred on Congress? Can it be said that a refusal of a state to allow articles to be manu-

factured within her borders (for export) any more directly or materially affects commerce than does her action in forbidding the retail within her borders of the same articles after they have left the hands of the importers?"

To this query the Supreme Court answered "No". In answering the question the Supreme Court cited the earlier cases (the [88] license tax cases, 5 Wall. 470) decided seventy years ago, where it is said: "Over this commerce and trade [the internal commerce and domestic trade of the states] Congress has no power of regulation nor any direct control. This power belongs exclusively to the states. No interference by Congress with the business of citizens transacted within a state is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a state is plainly repugnant to the exclusive power of the state over the same subject."

This statement of elementary constitutional law was made arguendo in deciding that Congress could not authorize a business prohibited by the state and that its license tax did not operate to permit the licensee to conduct a business in a state which prohibited that business. It may well be that the recent decisions of the Supreme Court in the Wagner Act cases depart from this earlier rule in holding as they do that the volume of output of a local business entering into interstate commerce may become the subject of federal legislation because it directly

affects interstate commerce, but the many decisions of the Supreme Court on the same subject must not be considered as completely brushed aside or disregarded or overruled by these recent decisions. Assuming, then, that the recent decisions extend the previous limits of federal power over local business because that business directly affects interstate commerce, the question in the case at bar is whether or not the conclusion of the petitioner that the ultimate destination of 39% of respondent's production in interstate and foreign commerce, subject to the regulatory power of Congress should control the other 61% of the production normally subject to state regulation, is a reasonable recognition of the right of the state government to control its domestic affairs. In considering the relative rights of the state and federal governments it should be remembered that after the Revolution full sovereignty was vested in each of the original states subject to minor control by Congress under the Articles of Confederation and that the federal government now has only such powers as were then granted to it by the states in the Constitution of 1787, and such as were granted by the amendments thereto. This, although historically clear, was made definite by the Tenth Amendment to the Constitution ratified in 1791 expressly reserving to the states, and to the people, all powers not given to the United States. Is it to be believed that full power would have been given to Congress [39] over interstate and foreign commerce if it had been thought by those who formed the Constitution in 1787 and con-

sented to its adoption at that time, that lying dormant within this general grant of power was a power to control practically every activity in a state if a small percentage of the product of this activity entered interstate or foreign commerce? The historical answer is clearly that such a provision so construed would not have been adopted.

In a sense we should view the case before us as if the parties involved were the state of California on the one hand and the federal government on the other, each asserting jurisdiction over the parties to this action, and each asserting the right to regulate the relation of employer and employee here involved. Is it logical to say that the federal government should control a confessedly intrastate or domestic activity because 39% of its product is shipped out of the state, and to deny to the state government the power to regulate the industry or any part of it for that reason, although 61% of the product is consumed within the state? Was it the intention of the thirteen original states when they adopted the Constitution to grant such power to the federal government? As the Supreme Court has often declared, where interstate commerce is concerned the federal government is supreme by reason of the interstate commerce clause of the Constitution. This rule has been enunciated from the first but in the instant case it is not asserted that the thing regulated is interstate commerce but merely something domestic — intrastate — which "directly affects" interstate commerce. So that we are concerned with an exercise of this corollary power rather than with the direct grant of power to Con-

gress. Certainly in this broader and more nebulous field exercise of power by the federal government should give due recognition to the inherent right of the sovereign state to control its own domestic affairs. I cannot believe that where less than 50% of the manufactured product enters into interstate and foreign commerce the federal government is justified under the interstate commerce clause in seizing or exercising jurisdiction over the whole industry. The line must be drawn somewhere and it seems to me that it must at least be drawn so that control will reside in the sovereignty most affected by the action.

The Wagner Act does not expressly authorize any interference with the powers of the state nor define what constitutes direct [90] interference with interstate or foreign commerce. If Congress had asserted jurisdiction over industries and activities wherein a certain percentage, say 50% or more, of its products, ultimately moved in interstate or foreign commerce, the court would sustain the action of Congress if it had any reasonable doubt of the constitutionality of its action. In such a case the presumption that Congress had acted constitutionally would only be overborne where it was clear beyond a reasonable doubt that its action was not authorized by the Constitution. But in the Wagner Act Congress did not undertake to draw the line to which it attempted to extend its authority other than by the general assumption of power over foreign and interstate commerce and over collective bargaining between employer and employee di-

rectly affecting such commerce, leaving to the National Labor Relations Board in the first instance the determination of whether or not the establishment of collective bargaining directly affected interstate commerce in each particular case. The conclusion of the Board upon the factual situation is made conclusive upon the courts. But the question of constitutional interpretation is one for the court to be applied by it to the facts found by the National Labor Relations Board. The ultimate fact found by the Board is that 39% of the output of the respondent enters into interstate and foreign commerce, for its must be assumed as a matter of law under the decision of the Supreme Court in the Jones & Laughlin S. Co., case that as to such commerce the matter of collective bargaining directly affects it, and that Congress consequently has power to establish, protect and maintain the right to collective bargaining. We may assume that if a line can be drawn between the employees engaged in producing goods for interstate and foreign commerce and those engaged in production for intrastate consumption, Congress would have legislative power over the former and the state over the latter, but we are concerned with a situation where no attempt has been made or could be made to segregate such employees, and where, because of that fact jurisdiction is asserted over all employees, thus in effect reversing the rule that federal power should clearly appear before its exercise is justified. We may agree, as the Supreme Court has decided, that control over a manufacturing plant may be asserted

because a cessation of its activities on account of a strike would diminish the volume of interstate commerce, but to hold that the exercise of power extends to the intrastate products, and labor [91] producing them, is to take another step away from the direct grant of power to Congress over interstate commerce in favor of federal power, which is not justified unless the federal interest preponderates.

Congress laid down no certain guide for the Board or the Court in reaching its conclusions, and has provided that the action of the Board is ineffective until approved by the Court. The question as to whether under the facts found by the Board there is a direct effect upon interstate commerce is one to be solved by the Court without any guide other than the proposition advanced by the statute and sustained by the Supreme Court as a valid exercise of constitutional authority, namely, that collective bargaining is a matter for federal control where the employees are engaged in activity which directly affects interstate commerce. As a matter of cold logic it may be said that if the decrease in the volume of output of a factory decreases the volume of interstate commerce it pro tanto directly affects such commerce, whether the amount is 100% or one per cent. For in either case the Supreme Court has decided that the effect is direct, and that the constitutional power of Congress attaches thereto. But we are not dealing with an abstract problem of mathematics, but with one of the practical construction of the federal constitution concerning the relative rights of states of the

United States and of the individuals concerned. As the line of state and federal authority must be drawn somewhere, I can see no other logical division than that of the line which determines which interest preponderates, foreign and interstate commerce on the one hand, or domestic or intrastate commerce, on the other. Let it be granted that this conclusion is not entirely logical or satisfactory, nevertheless it seems to be the only escape from a legalistic formulae which, under the guise of regulating commerce between the states, virtually transfers to the federal government substantially all the power which pertain to state sovereignty and which have been traditionally exercised by each of them ever since the Constitution was adopted. This formulae is not based upon the clear grant of power to Congress over interstate commerce, but upon what is held to be a necessary incident thereto. I recognize the logic and discernment of my associates in this case, but I cannot assent thereto because it proves entirely too much, and this because in my opinion it ignores a vital and essential element in the problem, that is, the superior and dominant power of [92] the state over its internal affairs. I therefore conclude that the application of the Board for an enforcement order in this case should be denied.

Thus far I have assumed, as my associates do, that the order of the Board relates to all the employees of the respondent. The cease and desist order quoted in the main opinion apparently applies to all the employees of the respondent but in the

petitioner's brief it is emphasized that the order of the Board relates to employees engaged as warehousemen at the Oakland plant. The petitioners state in their brief that,

"Approximately 3,000 to 4,000 cases are loaded daily into the various vehicles of conveyance. The employees here involved are the warehousemen who do all of such loading. * * *

"Thus the employees here involved actually start all of the respondent's products upon the course of transportation to their ultimate destination. * * *

"In a concluding finding with respect to the nature of respondent's business and the duties of these employees the Board found that all of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several states, and with foreign countries; and that the warehousemen here involved are engaged in operations in the course and conduct of such commerce and are an integral part of such commerce.

* * *

"It is to be noted that we are concerned here only with that phase of the respondent's business in which it is engaged in shipping its finished products to states outside of California and to foreign countries. We are not concerned with that phase of respondent's business in which the products are processed. The employees with whom we deal here are solely those who are engaged in actually packing, loading, and shipping respondent's finished products into box cars, trucks, and other interstate carriers destined for points in other states and in foreign

countries. They are the employees who actually ship the respondent's finished products in interstate and foreign commerce. We do not deal here with the other employees who are engaged in processing the various raw materials of the respondent. Therefore, we do not consider in this brief the application of the National Labor Relations Act to any other than shipping employees.

* * * [93]

"The activities of the respondent and the employees here involved are divorced from and are not affected by the other activities of the respondent. The respondent and its employees, insofar as the operations here involved are concerned, are directly engaged in interstate and foreign commerce and consequently are validly subject to Congressional regulation under the Act. Gibbons v. Ogden, 9 Wheat. 1; Heyman v. Hays, 236 U. S. 178; Southern, etc. Co. v. Hays, 236 U. S. 188; Sioux Remedy Co. v. Cope, 235 U. S. 197.

"The fact that the respondent is also engaged in the processing, production, or manufacture of canned goods does not divest its operations in selling and shipping its products to points outside of California of their interstate character."

"For the purpose of our Constitutional argument we are therefore justified in ignoring the fact that the respondent is engaged in processing or production, with which activities we are not here concerned."

In view of the fact that the petitioners in their brief limit the effect of their order to the ware-

housemen in the Oakland plant, I think the cease and desist order should be thus limited. However, this contention was advanced before the Supreme Court had sustained the validity of the Wagner Act as applied to intrastate activities which directly affect interstate commerce, and, consequently, the Board might not consider themselves now bound by the limitations which they thought advisable in presenting a constitutional question before the decision of the Supreme Court. My associates have dealt with the order of the Board as though it applied to all the operatives in the Oakland plant so far as the jurisdiction of the Board is concerned and so far as the order to cease and desist is concerned. I am inclined, however, to think that the Board's interpretation of its own order confining the effect thereof to those engaged in shipping respondent's product should be observed in our enforcement order.

In my opinion the application for the enforcement order should be denied, but if granted should be applied only to the employees of the respondent engaged in shipping at its Oakland plant.

(Endorsed:) Opinion, Concurring Opinion and Dissenting Opinion. Filed Jul. 31, 1937. Paul P. O'Brien, Clerk. [94]

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Saturday, July 31, 1937.

Before: Wilbur, Denman and Haney, Circuit Judges.

[Title of Cause.] [95]

Order Upon Petition for the Enforcement of an Order of the National Labor Relations Board

The National Labor Relations Board, hereinafter referred to as the Board, having petitioned this court for the enforcement of its Order in the above entitled proceeding, pursuant to Section 10(e) of the National Labor Relations Act, and having certified and filed in this court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence upon which said Order was entered and the findings and Order of the Board, and notice of the filing of the said petition and transcript having been served upon respondent, and this court having taken jurisdiction of the proceeding and the questions determined [96] therein,

Now, then, upon the pleadings, testimony, evidence and proceedings set forth in such transcript and upon the said Order made therein, it is Ordered, Adjudged and Decreed that the respondent, Santa Cruz Fruit Packing Company, its officers and agents, shall;

1. Cease and desist:

(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restrain- [97] ing or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action in order to affectuate the policies of the National Labor Relations Act:

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott,

Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sanneback, Water R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivers, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed; [98]

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, P. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge;

(c) Post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

Approved as to form this 8th day of August, 1937.

(Sgd.) J. PAUL ST. SURE,
Attorney for Respondent.

[Endorsed]: Order upon petition for the enforcement of an order of the National Labor Relations Board. Filed and entered July 31, 1937. Paul P. O'Brien, Clerk. [99]

Before the National Labor Relations Board
Twentieth Region.

Case No. XX-C-1.

In the Matter of: SANTA CRUZ FRUIT PACKING COMPANY, a Corporation,

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

Extra Sessions Courtroom, Alameda County Court House, Oakland, California, Monday, December 23, 1935.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.
Before:

Roger J. Traynor, Trial Examiner.

APPEARANCES:

BERTRAM EDISES,
Regional Attorney on behalf of the National Labor Relations Board.

PAUL ST. SURE and
E. H. MOORE,
Financial Center Building, Oakland, California, on behalf of the Santa Cruz Fruit Packing Company.

SAM KAGEL,
Room "C" Ferry Building, San Francisco, California, on behalf of Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association. [101]

PROCEEDINGS.

Trial Examiner Traynor: This is a hearing in the Matter of the Santa Cruz Fruit Packing Company, a corporation, and Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, Case No. XX-C-1.

I have here a copy of the order designating me as Trial Examiner, which I will ask to be made a part of the record.

(Said order is in the words and figures following, to-wit:

United States of America
National Labor Relations Board.

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Santa Cruz Fruit Packing Company, a Corporation and Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association. Case No. XX-C-1.

In Witness Hereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 18th day of December, A. D. 1935, at Washington, D. C.

[Seal] (Signed) BENEDICT WOLF,
Secretary. [102]

United States of America
Before the National Labor Relations Board

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C. on the 17th day of December, 1935.

Present: J. Warren Madden, Chairman
John M. Carmody
Edwin S. Smith

Case No. XX-C-1.

In the Matter of SANTA CRUZ FRUIT PACKING COMPANY, a Corporation

and

WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION.

ORDER DESIGNATING TRIAL EXAMINER.

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Roger J. Traynor act as Trial Examiner in the above case, in place and stead of Henry Eickoff, Jr., and perform all the duties and exercise [103] all the powers granted to trial examiners under the Rules and Regulations—Series I of the National Labor Relations Board.

By direction of the Board:

[Seal] BENEDICT WOLF

Secretary.")

Are you ready to proceed?

Mr. Edises: Ready, Mr. Examiner.

Mr. St. Sure: We have already given, Mr. Examiner, to the reporter the formal appearance of myself, Paul St. Sure, and E. H. Moore, associated with me, in behalf of the Santa Cruz Fruit Packing Company.

Before proceeding in the matter, I desire, as the rules of the Board would authorize us, to make a motion to dismiss the proceeding.

Mr. Edises: (Interrupting) Before Mr. St. Sure proceeds further may I interrupt to have my formal appearance, Bertram Edises, entered in the record as counsel for the Board.

Mr. Kagel: I would like to enter my appearance for the Weighers, Warehousemen and Cereal Workers Association, Local 38-44,—Sam K-a-g-e-l.

Mr. St. Sure: The motion I desire to make is a motion to dismiss the complaint upon the ground that the Act upon which, or under which the complaint is brought, the National [104] Labor Relations Act, approved July 5, 1935, violates the Constitution of the United States and, particularly, the Commerce Clause and the Fifth Amendment of the Constitution, relating to due process of law.

And, further, we base our motion to dismiss upon the contention that even though it be assumed that the Act is not unconstitutional, that the facts stated in the complaint are insufficient to furnish the basis for an action under the Act itself, in this:

That upon, or from the face of the complaint it appears that the action is brought against a concern which is engaged in the processing and packing of fruits and green vegetables; that the particular violations complained of relate to certain employees who were employed in the warehouse department of that concern which was engaged in what we contend to be an intrastate business, that is, the packing and processing of fruits and so forth.

I do not desire to argue the law of the matter at

this time, unless the Examiner desires, for I assume that this same objection, that is, the basis of this objection, is expected to be made in connection with the proceedings on behalf of the employers when these same issues will be raised.

We do desire to assert our position, as we also understand the rules permit us to do, that our position in this proceeding, both by answer and by actual presence here, and [105] by participation in the proceedings, shall not constitute a waiver of this motion or our, in a sense, general demurrer to the proceedings and the complaint itself.

Similarly, we desire to object to the introduction of evidence under the complaint upon these theories that I have mentioned:

First, the unconstitutionality of the Act and the lack of jurisdiction of the Board; and also the lack of jurisdiction because the complaint does not state sufficient facts to constitute the basis of a charge.

In making that general objection to the introduction of any evidence, I pould like, if possible, by stipulation with counsel, and with the approval of the Examiner, to have it understood, that that general and basic objection will go to the entire proceeding, feeling that if it can be so agreed, we can save a lot of time avoiding my making objection each time a question is asked and each time a new line of testimony is offered.

Our position is simply that we feel that the proceeding is under an Act, under these circumstances, which has not any effect or authority; that the Board is without jurisdiction, and that we should and must object to the introduction of this testi-

If the suggestion I have made is agreeable, we can perhaps save considerable time, it being understood that my [106] objections run throughout the proceeding.

Trial Examiner Traynor: Is that agreeable?

Mr. Edises: I think I can stipulate to that.

Likewise, I believe that it will possibly save time if we stipulated that all objections which are overruled will be deemed excepted to.

Mr. St. Sure: That will be satisfactory. I didn't know the procedure in that connection.

Trial Examiner Traynor: So stipulated?

Mr. St. Sure: The understanding is, as Mr. Edises, said, it may be deemed that the general objection to the jurisdiction and the proceeding itself, and the introduction of any evidence under the complaint, under the theory of a general demurrer, will be reserved and considered as having been made.

Trial Examiner Traynor: Yes.

Mr. St. Sure: If we have any further or specific or particular objection to any particular testimony, we will make that objection specially at the time.

Trial Examiner Traynor: It will be so understood.

Mr. St. Sure: Thank you.

Mr. Edises: I do not propose at this time to go into an extended discussion of the constitutionality of the National Labor Relations Act other than to note my disagreement with counsel's contention, that is, that the provisions [107] of this act do not

constitute a proper exercise of the interstate commerce powers given to the central government under the Federal Constitution.

It is our intention to prove, during the course of this proceeding, that the Respondent was engaged in interstate commerce; that these workers, whom we claim were discriminated against within the meaning of the National Labor Relations Act, were likewise engaged in work of an interstate commerce nature.

And, in view of the challenge of counsel for Respondent to the constitutionality of the Act, a challenge which naturally goes to the findings of Congress, as well as other sections of the Act, it will probably be a part of our case to demonstrate that there has been an actual obstruction in this case of interstate and foreign commerce.

During the course of our proof we intend to indicate not only the interstate and foreign commerce operations of the Respondent, but also to prove something of the general economic nature of the canning industry. Such proof has been declared by the Supreme Court of the United States to be highly important in the case of Acts, the validity of which depend upon certain economic facts.

I note that counsel for the Respondent has not filed an amended answer to the amended complaint. My recollection, however, is that the amended complaint introduced no material [108] different allegations, and I am perfectly willing to stipulate that the denials of the original answer may go to the allegations of the amended complaint, providing they are applicable.

Mr. St. Sure: For the purpose of the record, it is my understanding the only variation between the original complaint and the amended complaint is that in the amended complaint there is a statement affirmatively alleging that the Respondent engaged in, and is engaging in foreign commerce, in addition to interstate commerce.

I believe that in our answer to the original complaint we specifically and generally denied an allegation which was not present. We denied we were engaged in either interstate commerce or in foreign commerce.

At the time the amended complaint was served that matter, which I have just stated, was discussed I believe with Mr. Wagenet and it was my understanding, and my recollection of that discussion, that our answer to the original complaint should be deemed in this proceeding to be an answer to the amended complaint.

If that is agreeable, as I understand it is from Mr. Edises' statement, we will consider our answer to the original complaint be considered as deemed to be filed herein as an answer to the amended complaint as well.

Trial Examiner Traynor: So ordered. [109]

Mr. Edises: So stipulated.

I wish at this time to move for the Examiner to deny the motion of counsel for a dismissal of this action based on his allegations of unconstitutionality.

Trial Examiner Traynor: The motion is denied without prejudice.

Mr. Edises: You are referring to Mr. St. Sure's motion.

Trial Examiner Traynor: Mr. St. Sure's motion?

Mr. Edises: Yes.

Trial Examiner Traynor: Yes.

Mr. Edises: I will ask Mr. Anger to take the stand.

ROBERT ANGER,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Robert Anger.

Q. And your address?

A. 5810 Shattuck Avenue, Berkeley.

Q. Are you married?

A. I am.

Q. Have you any children?

A. Three.

Q. When did you first go to work for the Santa Cruz Fruit [110] Packing Company?

A. In the spring of 1932.

Q. And how did you go about getting the job? Who did you apply to?

A. There was a foreman of the warehouse that I knew and had worked with before. I happened by the place one day and was talking to him.

He said, "Are you working?"

I said, "No."

He said, "Come on out; I have got a job for you."

(Testimony of Robert Anger.)

Q. That man was foreman of the Santa Cruz plant?

A. Not the foreman of the plant, but the foreman of the warehouse.

Q. You applied for a job?

A. I didn't apply; I was told to come on out to the job.

Q. And he hired you?

A. He hired me the following day.

Q. And what sort of work did you do at the Santa Cruz warehouse?

A. I went in and was handling cases and loading cases, and finally went into where I was working on the labeling machine. I did that for the most of that year.

Q. Can you describe briefly the general nature of the work which a man in the warehouse does?

A. Yes, I think I can. [111]

Q. Will you?

A. I did about the same kind of work as the average man that was in the warehouse. We work on the labeling machines, tailing off.

Q. What does "tailing off" mean?

A. After the cases are filled with cans they are run out on a roller and we have to stack them and take them away on trucks and keep them out of the way of the labeling machine. They are coming through fast. We loaded trucks and did general warehousework, trucking and loading, or any work there is to be done in the warehouse.

Q. Where is the Santa Cruz warehouse located with reference to the canning plant where the canning operations take place?

(Testimony of Robert Anger.)

A. It is attached right directly to the same building, except there is a wall between the two.

Q. And a doorway?

A. Doorways, yes, three of them.

Q. Were the men in the warehouse shifted around from one type of work to another, or was one man constantly assigned to a specific type of work?

A. The men were shifted to all kinds of jobs. They had a few machine men that worked pretty steady on the labeling machines, but whenever they were called on to do something else, they went and did that work. [112]

Q. I take it that one day you would be doing stacking or labeling, and the next day—

A. (Interrupting) We did no stacking. That was done by the can stackers under the Contract.

Q. How about the loading? Was that pretty widely distributed among the men in the warehouse?

A. Yes, loading both trucks and cars.

Q. And you were subject to being assigned to loading duty at any time and at any day, is that correct?

A. The last year and a half I was in the plant I was handling the salvage and dirty cans, relabeling and fixing them up, and getting them ready for the market; and at any time they wanted an extra man they would come and call me.

Q. And to do loading and things of that sort?

A. Yes.

Q. What did you load?

A. Pardon?

(Testimony of Robert Anger.)

Q. What did you load?

A. We loaded on the regular trucks that backed up to the door, and we loaded into railroad cars.

Q. Was the goods packed into cartons?

A. In cartons and wooden cases.

Q. And did you load only into trucks?

A. No; we loaded into railroad cars.

Q. And what railroad was that, what line was that? [113]

A. I think it is the Southern Pacific; I am not sure.

Q. And there is a spur line coming directly up to the warehouse?

A. Yes.

Q. And the warehousemen loaded these cartons of canned goods directly into the box cars, is that correct?

A. Correct.

Q. Were the cartons marked with the destinations of the goods?

A. Yes.

Q. Referring to the place of shipment, did you ever notice the places of shipment of these cartons?

A. Certainly.

Q. What were some of the chief places of shipment that you observed.

A. In the United States?

Q. Well, let's start first with the United States, yes.

(Testimony of Robert Anger.)

A. New York, Boston, Philadelphia, Cincinnati, Detroit, Chicago, Sioux City, Marshalltown and many others.

Q. Did you ever notice the names of the consignees on the cartons, the firms to whom the products were directed?

A. Yes.

Q. What were some of those?

A. The Marshalltown Canning Company was a big buyer.

Q. And where is that located? [114]

A. Marshalltown, Iowa.

Q. And some of the others?

A. I say Marshalltown, Iowa—that is where the most of it went, and distributed from there. Then Seeman Brothers of New York—I believe, of New York.

Q. Any others?

A. Well, hundreds of small firms that used to buy. It is hard to remember their names, because you don't watch the names. They come through and you just load them. They are in stacks and you are told to load from that stack as many as you want. I didn't watch the names.

Q. I am referring to some of the more important consignees out of California points. Do you remember of any others to whom large quantities were shipped, other than the ones you named?

A. I have seen large shipments go to London, Liverpool; some shipped to Southampton and Hull, Manchester.

(Testimony of Robert Anger.)

Q. You are referring to ports in England, are you not?

A. Yes.

Q. Any others?

A. Well, those were some of the main ports. I don't remember them all.

Q. Have you any knowledge of approximately how much canned goods—I presume that you refer to them by cases—about how many cases of canned goods were shipped out, or trucked out of the warehouse per day during the busy season, [115] which, I presume, is from about June to September?

A. No, I have no idea as to that.

Q. About how many box care per day were loaded?

A. I have seen three, four cars loaded a day.

Q. And about how much of the stuff was destined for points outside of the State of California, including to foreign countries, if you know?

Mr. St. Sure: If he doesn't know the total, he can scarcely know a portion of the unknown total.

Mr. Edises: He can give an idea if he doesn't know exactly how much was shipped out.

Mr. St. Sure: I have no objection to the question.

A. Judging from the volume that was shipped out of the place, I would say 75 per cent to 80 per cent went out of the state.

(Testimony of Robert Anger.)

Q. (By Mr. Edises) Do you know the method of transportation of that canned goods?

A. Some of it was shipped direct by car.

Q. By car, you mean by box cars?

A. By box car. Some was shipped by trucks to its destination.

Q. Do you know whether those trucks went to points outside of the State of California?

A. Well, they went north to Seattle and Portland, by trucking companies that haul up and down the Coast. [116]

Q. Do you happen to know the names of any of those trucking companies?

A. No, I do not.

Q. Any other methods of shipment?

A To the docks, to go on the boats to go East.

Q. To which—

A. (Interrupting) To foreign countries.

Q. To which docks?

A. Howard Terminal and Encinal Terminal.

Q. Where is Howard Terminal?

A. At the foot of Market Street.

Q. In Oakland?

A. Yes.

Q. Where is Encinal Terminal?

A. Over in Alameda.

Q. And what happened to it then?

A. Well, I presume it was loaded on boats. In fact, I have seen it loaded on boats.

(Testimony of Robert Anger.)

Q. Have you any knowledge of about what proportion was shipped by water and what proportion shipped by rail, and what by truck?

A. No, I would have no knowledge of that.

Q. Who did the hiring and firing at the Santa Cruz warehouse? I am referring now to the summer of 1935.

A. Well, I believe Mr. Torsen did—T-o-r-s-e-n.

[117]

Q. I think that is spelled T-o-r-e-n-s-o-n.

A. Yes.

Q. You say you believe Mr. Torenson did. Don't you know?

A. I believe. I wasn't present when he hired or fired any one so I couldn't say definitely.

Q. Was he the foreman of the warehouse in which the Santa Cruz goods was stored?

A. He was.

Q. Who supervised the work in the warehouse?

A. He did, accompanied by an assistant.

Q. Who was the assistant?

A. Ernie Reich.

Q. And I take it that Mr. Torenson gave orders in regard to the work in general, told the men what to do?

A. The orders all came from the main office to his office.

Q. Was he the one that told the various men what particular work they were supposed to do?

A. Yes sir.

(Testimony of Robert Anger.)

Q. During the month of July, 1935, what hours were you working?

A. The hours were not the same. Some mornings the boys would go to work at 6 o'clock, and sometimes 7 o'clock.

Q. I didn't ask you about when the boys went to work. I asked you what hours you worked.

A. I was going to work all the time at 7 o'clock; once in [118] awhile of mornings I would go in at 8 o'clock.

Q. Were you on the day shift?

A. Yes, all the time.

Q. Tell me what hours you worked, from 7 to when?

A. From 7 to 12; and from 12:30 to 5, 5:30, 6, 6:30 and 7, up until 10 and 11 o'clock at night.

Q. What hours did you get off for your meals?

A. Half an hour off at noon.

Q. From 12 to 12:30?

A. Yes; and 45 minutes for supper.

Q. What time did you get off for supper?

A. 6 o'clock.

Q. And you came back at 6:45?

A. Correct.

Q. And you worked until when?

A. That is hard to say; it varied. Some nights it would be 9 o'clock, some 8:30, and sometimes 10, and I have worked later.

Q. Doing work later than that during the busy season?

A. Yes.

(Testimony of Robert Anger.)

Q. What time did you get off during the busy season?

A. 5:30.

Q. In the afternoon?

A. Yes.

Q. And when you got off at 5:30 in the afternoon were you [119] through for the day?

A. I was through for the day.

Q. Was that an exceptional thing during the busy season?

A. I think it was for me, yes.

Q. How was it determined when you were supposed to be through for the day?

A. Well, I think it was determined by the amount of orders that was to be put up.

Q. Well, who told you?

A. If there was a lot of orders, we had to work later.

Q. Did Torenson tell you when you could get away, when you could knock off?

A. Yes.

Q. When were you paid?

A. On Fridays.

Q. How many times a month?

A. Every week.

Q. Every week?

A. Yes.

Q. And how did you get your pay checks?

A. Go up to the office and get it most of the time. Occasionally, if we were running a little slack, and there was not much work in the office, the timekeeper would come around and hand us our checks.

(Testimony of Robert Anger.)

Q. What office did you go to to get your checks? [120]

A. Santa Cruz.

Q. The Santa Cruz—

A. (Interrupting) Up in front of the cannery.

Q. Whose office was that?

A. Whose office?

Q. Yes.

A. I presume the Santa Cruz.

Q. I mean who was in charge of that office?

A. Well, there was a timekeeper there.

Q. Who was he?

A. I know him only by the name of Mack. Probably some of the other boys can give you his name.

Q. Who signed you pay checks?

A. Robert Gaddis.

Q. Any other name on the check?

A. Yes, it was countersigned by Dr. Kenney.

Q. Do you mean Keeney—K-e-e-n-e-y?

A. Yes.

Q. Whose checks were they, Santa Cruz?

A. Stamped Santa Cruz; printed, rather.

Q. What was the full name of the company that appeared on the check?

A. Santa Cruz Packing Company.

Q. Santa Cruz Fruit Packing Company, is that correct?

A. Well, I don't recall the "Fruit". I recall the Santa [121] Cruz Packing Company.

Q. What is this Stokely Warehouse—where is it located?

A. Directly across the street from the Santa Cruz warehouse.

(Testimony of Robert Anger.)

Q. Did you ever work there?

A. No.

Q. Do you know whether any of the other men who were regularly employed in the Santa Cruz warehouse ever worked at the Stokely warehouse?

A. Yes.

Q. What was the practice in that respect?

A. At times, when work was slack in either one or the other warehouses, and they would have more work on the other side, some of the boys from Santa Cruz would go over there; and when it was reversed, they came from the Stokely side over to the Santa Cruz side.

Q. And who was the foreman at the Stokely warehouse?

A. Stanley Morris.

Q. Do you know who his boss was?

A. Well, the boss, I believe, of the two warehouses, the man considered the boss, was a man named Joe Remington, who was supposed to be the superintendent of the entire plant.

Q. Who was his boss, if you know?

A. I presume Mr. Huddleson.

Q. Did the Stokely men receive their pay checks from the [122] same source that you did?

A. Yes sir.

Q. Did you ever see any of their pay checks?

A. Yes sir.

Q. Whose names appeared on them as signer?

A. Robert Gaddis and Dr. Keeney.

Q. Were they likewise Santa Cruz Fruit Packing Company checks?

(Testimony of Robert Anger.)

A. Yes sir.

Q. What were some of the more important products that you handled in the warehouse?

A. Well, I don't know as any one product was any more important than the others.

Q. Well, perhaps "important" isn't the word. What product was put up in the largest quantities during the summer season?

A. During the summer season, peaches.

Q. And then what?

A. Cots.

Q. You mean apricots?

A. Yes.

Q. And then what?

A. Well, they canned cherries.

Q. Anything else?

A. Spinach, pork and beans, vegetables. [123]

Q. What kind of vegetables?

A. Carrots, beans.

Q. Any asparagus?

A. Yes, plenty of it,

Q. Do you know what vegetable product was handled in the largest quantities?

A. Spinach, I think.

Q. How about tomatoes?

A. Tomatoes were handled largely, too.

Q. Just how did the products get from the cannery to the warehouse? Describe the process.

A. By electric truck.

Q. Who did the trucking?

A. George Rose.

(Testimony of Robert Anger.)

Q. Just one man?

A. Yes sir. He was the truck driver.

Q. Do you know whether Mr. Rose is one of the complainants in this action?

A. He is.

Q. Do you know what was the—strike that—take, for example, peaches; do you know what the usual or customary interval of time was between the trucking of the cans into the warehouse and the loading of those cans on to trucks or box cars for shipment?

A. Yes; that varied. Lots of buyers would purchase large [124] quantities of peaches to be put up for them, and put up in stacks in the warehouse to be given on orders as they called for them. Others was brought directly from the canning in the warehouse, as soon as the cans cooled, and they were labeled, cased and shipped to their destination.

Q. Are you a member of the Weighers, Warehousemen and Cereal Workers Local 38-44?

A. I am.

Q. Which is affiliated with the International Longshoremen's Association?

A. Yes.

Q. When did you join that union?

A. On August 7, 1935.

Q. When did you first make application to join?

A. About two weeks previous to that time.

Q. When did you pay your dues?

A. Well, we didn't pay our dues until after we were initiated.

(Testimony of Robert Anger.)

Q. When did you first get your union button?

A. On Monday, August 5th.

Q. 1935?

A. 1935.

Q. How did you happen to apply for membership in the union?

A. Because I wanted to get better working conditions and [125] better money, better wages.

Q. Can you describe what working conditions you were interested in changing?

A. The long hours.

Q. Don't characterize. Be specific. Tell us just what the hours were, and so on.

A. My hours were hardly ever less than nine, from that to ten and eleven, twelve and fourteen hours. I wanted to get on an eight hour day.

Q. By the way, to interrupt you for a moment, had you ever belong to the union before?

A. I have right here in this city.

Q. For long?

A. Two and a half years.

Q. What union was that?

A. The Engineers' Local No. 57, which is now 59.

Q. Now, go ahead with the account of the conditions you were interested in changing.

A. I was interested in changing the long hours, and I wanted to get more money for the work I was doing.

Q. What were you getting?

A. 35 cents an hour. I started to work for the company for 22½ cents an hour.

(Testimony of Robert Anger.)

Q. Any other matters that you were concerned about?

A. The wages and hours was what I was concerned in. [126]

Q. So, wanting to change these conditions, what did you do about it?

A. I investigated the Weighers, Warehousemen and Cereal Workers Union.

Q. How did you happen to take it on yourself to investigate it?

A. Simply because I had been a union man before, and by joining the union that I did, it bettered by condition and bettered my wages.

Q. Was there any kind of a union at the Santa Cruz plant prior to this?

A. None that I knew of.

Q. Go ahead. What did you do?

A. I started in and went to the different boys and talked to them to find out if they were willing to become union men.

Q. And by the "boys" you mean whom?

A. The boys I was working with.

Q. In the warehouse?

A. Yes.

Q. Go ahead.

A. And I found almost every one of them ready to become union men.

Q. When did you first start talking to them about it?

(Testimony of Robert Anger.)

A. About the middle of June.

Q. 1935. [127]

A. Yes sir.

Q. Go ahead with your account.

A. As those men admitted their willingness of wanting to join a union, I had them sign a sheet of paper. I finally got both the warehouses, the Santa Cruz Packing Company and the Stokely warehousemen signed up 100 per cent.

Q. Every man in the warehouses?

A. Every man in the warehouses except the foreman and the shipping clerk.

Q. What did their signature represent, what were they signing for?

A. It was showing their willingness to become union men.

Q. Members of any particular union?

A. Weighers, Warehousemen and Cereal Workers Union was what we wanted to join.

Q. You had already contacted the Weighers and Warehousemen, had you?

A. Yes sir.

Q. When did you first contact them?

A. I contacted them about the 23d or 24th of July.

Q. 1935?

A. Yes.

Q. Who did you see then?

A. Mr. Woods.

Q. Who is he? [128]

A. Their business agent.

(Testimony of Robert Anger.)

Q. Their business agent?

A. Yes.

Q. Where are the headquarters of this union?

A. 908 West 7th Street, in Oakland.

Q. What was Mr. Woods' response to your statements?

A. I met Mr. Woods, talked with him, told him the amount of men we had in the two warehouses, and that we wanted to become union men. Mr. Woods told me to go ahead and get those men all signed up, and if they paid over their initiation fees of 100 per cent, the union would take them in, and I done so.

Q. You went about the process of collecting their dues and so on?

A. I did; collecting their initiations fees, not their dues.

Q. Initiation fees?

A. Yes.

Q. When did you do this work?

A. Noons, nighttime, when we were walking up the street.

Q. Did you collect any of their initiation fees while you were on duty?

A. Not while I was working, no.

Q. Did you bring this to the attention of the management of the plant? [129]

A. I did not.

Q. Why didn't you?

A. Because I knew I would be fired.

(Testimony of Robert Anger.)

Mr. St. Sure: I take it that the rules permit formal objections, and I assume that the Examiner has authority to rule on conclusions of that kind as not evidence.

Mr. Edises: I am willing to let the last voluntary statement go out as not responsive.

Mr. St. Sure: I haven't objected to hearsay because I assume the Examiner is going to sift out the things that are material and those that are not material.

Trial Examiner Traynor: I think answers like the last one should be stricken out.

Mr. St. Sure: Thank you.

Q. (By Mr. Edises) Did you solicit membership in the union of any one other than the warehousemen?

A. I did not.

Q. Why didn't you?

A. There was no other union for us to affiliate with but the warehousemen. We were warehousemen.

Q. Why didn't you go after the cannery workers?

A. The cannery workers were not connected with us at all.

Q. In other words, the warehousemen were by themselves?

A. By themselves entirely; yes.

(Testimony of Robert Anger.)

Q. Now, by August 3, 1935, had 100 per cent of the ware- [130] housemen, in both the Stokely and the Santa Cruz warehouses indicated their desire to join the union?

A. They had.

Q. And when did Mr. Woods tell you definitely that these men would be taken into the union?

A. Monday, August 5th.

Q. When did the men first receive their union buttons?

A. Some of the men got them that day, Monday.

Q. Did you hand out most of them that day?

A. No, I only had a few, eight or nine.

Q. Eight or nine?

A. Yes.

Q. Did you work Monday, August 5th?

A. I did.

Q. What time did you go on shift?

A. 7 o'clock.

Q. By the way, do you punch a time card when you go on?

A. No, we don't puch our own card.

Q. Who punches it?

A. The card is in Mr. Torenson's office. You go in each morning and get the card from him and he punches the time in it with a hand punch; and he punches it out at night when you are through.

Q. Did you wear your union button that day?

A. I did. [171]

(Testimony of Robert Anger.)

Q. Did anything particular happen that day with reference to the union?

A. Not during the day, no.

Q. Well, on Monday, August 5th?

A. I believe Mr. Huddleson called a meeting at that time. I went home at 5:30. I wasn't at the meeting.

Q. You weren't at the meeting?

A. No.

Q. How did you hear about it?

A. They told me about it the following morning.

Q. Who told you?

A. All the boys; everybody was talking about it.

Q. You say you left at 5:30 that day?

A. Yes.

Q. Were you supposed to return later in the evening?

A. No.

Q. You were through for the day?

A. I was through for the day.

Q. Did anybody else give out buttons besides yourself?

A. Not to my knowledge.

Q. Calling your attention now to Tuesday, August 6, what time did you go on shift that day?

A. 7 o'clock.

Q. And what time did you knock off?

A. 5:30. [172]

(Testimony of Robert Anger.)

Q. Anything particular happen that day with reference to the union?

A. Nothing.

Q. Did you see Mr. Woods that day?

A. On Tuesday?

Q. Yes.

A. I saw Mr. Woods on Monday but not on Tuesday.

Q. What did you see Mr. Woods about Monday?

A. He came out with the buttons. He had a few buttons. He was covering his territory. He went around to all the ports and various, different places, and he came along and left the buttons with me to give out to the boys.

Q. Did Mr. Woods tell you anything at that time about an initiation meeting?

A. Yes.

Q. What was said?

A. That we were to come Wednesday night to be initiated.

Q. Where was the initiation to take place?

A. 908 West 7th Street; that is the Weighers and Warehousemen's union hall.

Q. Did you tell any one about the initiation meeting, tell any of the men?

A. I told many of them; that is, I didn't tell them all individually that day but I told one boy and he would tell another in the various, different departments they were [173] working in.

(Testimony of Robert Anger.)

Q. And you didn't see Mr. Woods on Tuesday?

A. Not that I recall.

Q. Did you see—strike that—do you know a Mr. Gomez?

A. By sight only.

Q. Did you see him either at or in the vicinity of the Santa Cruz plant on Monday, August 5th, or on Tuesday, August 6th?

A. I saw him Monday, Tuesday and Wednesday in the plant.

Q. Where did you see him on Monday?

A. Walking around in the warehouse, in Stanley Torenson's office talking ta Stanley Torenson.

Q. What was he doing in the warehouse? What did you see him doing?

A. I saw him walking up and down the aisles with a piece of paper in his hand. What he had on the paper, I don't know.

Q. Did you talk to him?

A. I did not.

Q. About what time was that on Monday? [134]

A. I saw him a couple or three different times during the day each day.

Q. Do you remember approximately the time?

A. Well, I remember I saw him in the mornings around 10 o'clock, and in the afternoon around 2:00 or 2:30 going through the warehouse.

Q. And on Tuesday, when and where did you see him?

A. Practically in the same places.

(Testimony of Robert Anger.)

Q. And what did you see him doing?

A. I presume he was looking over the stock room, the stock of canned goods, the stacks.

Q. I am not asking what you presumed he was interested in. I am asking you what you saw him doing.

A. That is all, walking up and down the aisles and looking at the stacks and looking at the piece of paper he had in his hand.

Q. Calling your attention now to Wednesday, August 7th, what time did you go on shift on that day?

A. Seven o'clock.

Q. And had you handed out all of your union buttons by that time?

A. All that I had in my possession.

Q. Were the men wearing them?

A. Yes.

Q. Did you see Mr. Gomez around at any time on Wednesday? [135]

A. I did.

Q. Do you remember the times?

A. I saw him in the morning.

Q. About what time?

A. About 10 o'clock.

Q. And then when?

A. Around 2:30 in the afternoon.

Q. Did you see him later?

A. Yes.

Q. When?

(Testimony of Robert Anger.)

A. At 2:30, particularly, I saw him come in with two Chinamen.

Q. Are you quite certain of that time, 2:30?

A. Yes, very closely.

Q. What did he do at that time?

A. He came in the side door of the warehouse off of the street, and walked in with the two Chinamen walking behind him, and came right down to the printing press where I was working. I was helping the printer that day.

Q. Yes.

A. And just as he got to Mr. Torenson's door, Mr. Torenson was coming out of the office, and he stopped Mr. Torenson and was talking to him and introduced the two Chinamen to Mr. Torenson.

Q. Did you overhear the conversation? [136]

A. I wasn't close enough to overhear it, but I did see them shake hands.

Q. Did you speak to Mr. Torenson on Wednesday morning?

A. I did.

Q. And where was the conversation held?

A. Right by the printing press.

Q. Were you working there?

A. Yes.

Q. Anybody else working on that press?

A. Mr. Hughes.

Q. Was he present when you spoke to him at that time?

A. Yes.

(Testimony of Robert Anger.)

Q What was the subject of this conversation?

A. I asked Mr. Torenson in this way—I called him Stan. I said, "Stan," I says, "we boys have organized with the Weighers and Warehousemen's Union, which is affiliated with the I. L. A., and we want to go tonight to be initiated, and we want to get off at 4:30 so we can go home and get cleaned up and be at the hall by eight o'clock."

He said, "All right, Bob, thank you for telling me. That will give me a change to arrange my work."

That was all that I said at the time.

Q. At that time was anything said to him about the night men getting off?

A. About the night men? [137]

Q. Yes.

A. No.

Q. At that time?

A. Not right at that time. It was later on in the day, it was just right at the lunch hour that I mentioned about the night men to him, and that was in his office and I was alone.

Q. Do you remember the time of the first conversation you had with Mr. Torenson?

A. Eight-thirty in the morning.

Q. And the second conversation was when?

A. Right at noon.

Q. And in Mr. Torenson's office?

A. Yes.

(Testimony of Robert Anger.)

Q. Now, what was said at that time?

A. I told Mr. Torenson that the men who were working on nights would want to go to the meeting, but they would come back after the initiation was over and resume their night duties, which I thought would be about 10 o'clock.

Q. What did he say to that?

A. He said that was all right. That was all that was said.

Q. Did you speak to him again on Wednesday?

A. I did.

Q. About what time?

A. Three-thirty in the afternoon.

Q. Where were you at that time? [138]

A. Right by the printing press.

Q. Anybody else there at the time?

A. Mr. Hughes.

Q. What was said at that conversation?

A. A rumor had come to me, after the lunch hour, that any of the boys who were wearing buttons and who attended this meeting that night to become initiated would be fired. I asked Mr. Torenson if he had made that statement.

Q. Do you know where you heard this rumor?

A. Well, you know how rumors travel; they come from one to the other.

Q. You don't recall who told you?

A. No, not now.

Q. Go ahead. What was said?

(Testimony of Robert Anger.)

A. I asked him that question and he said, no, he had made no such statement.

I said, "Did the statement come from Mr. Huddleson to you that any of the boys would be fired if we attended that meeting?" He said, "No, it did not."

That was all of that.

Q. Did you tell the men that you had—strike that—Did you feel that you had received definite permission from Mr. Torenson to have the men attend the meeting?

A. I did. [139]

Mr. St. Sure: I take it that is drawing conclusions and, perhaps infringing on the Examiner's proper function in the proceeding.

Mr. Edises: I will strike that.

Q. (By Mr. Edises) Did you tell the men that day that you had obtained Mr. Torenson's permission for them to leave early so they could go to the meeting?

A. I did.

Q. Who did you tell?

A. I told a number of the boys and told them to pass the word to the others.

Q. Do you remember when you first passed out that information?

A. Well, that information was passed out early in the morning.

Q. And did you tell them that Mr. Torenson had said it was O. K. for the men to leave early?

A. He had told me.

(Testimony of Robert Anger.)

Q. By the way—

A. (Interrupting) That is, he signified his willingness.

Q. When did you tell the night men about the meeting that night?

A. They were told that morning.

Q. About what time?

A. I would say around nine o'clock. [140]

Q. Did you tell any of them?

A. Yes.

Q. Do you remember who you told?

A. Larry Doyle.

Q. Who else?

A. Al Pio.

Q. Anybody else?

A. I told them to tell the others that were working with them.

Q. Was that just as they were getting off shift that day?

A. Yes.

Q. What was your purpose in asking Torenson if the day men could get off at 4:30? I thought the meeting wasn't going to be held until eight o'clock?

A. Well, naturally when a man is working all day long he wants to get home in time to get cleaned up. He doesn't want to go down there in his working clothes.

Q. Well, where did the men live?

A. They are scattered all over in various, different sections of the city. I don't know where they all live. I know I had a long ride myself.

(Testimony of Robert Anger.)

Q. Where did you live with reference to the plant, how far?

A. I should say it was around five and one half miles.

Q. Do you know whether any of the men lived in Hayward or San Leandro? [141]

A. Yes.

Q. Do you know any of the men who do live there?

A. I know one named Connie Martin, one of our boys.

Q. Well, what happened at 4:30 on Wednesday?

A. At 4:30 all the boys came into the warehouse, came from across the street from the Stokely Warehouse, and—

Q. (Interrupting) By the way, who told the Stokely men?

A. I told some of them.

Q. About the meeting that night?

A. Yes.

Q. And likewise about getting off at 4:30?

A. Yes.

Q. When you spoke to Torenson did you ask about the Stokely men as well as the Santa Cruz?

A. No.

Q. Why didn't you?

A. I didn't think it was necessary.

Q. Can you explain that statement?

A. No, I don't think I can, no more than I took it for granted.

(Testimony of Robert Anger.)

Q. It was your undertanding that the Stokely and Santa Cruz men were really one unit, is that correct?

Mr. St. Sure: I do not want to be suggesting that the questions you have been asking are leading, because I do not want to make technical objections, but I think the last question was rather leading. [142]

Trial Examiner Traynor: Reframe the question, Mr. Edises.

Q. (By Mr. Edises) What was your—Strike that question, the one I just started. Didn't you have any reason at all for not specifying the Stokely men? Can you explain what your feeling was at the time?

A. Well, I guess I just simply took it for granted that the Stokely men were organized with us and we were practically one, working back and forth together, and if the Santa Cruz Warehousemen and they were in our organization, they were going too.

Q. Were any of the Stokely men wearing buttons?

A. They were.

Q. All right, now tell us what happened at 4:30.

A. At 4:30 we all congregated at the office to turn in our time cards and have them punched for the day at 4:30.

Q. And when you say "we" you mean who?

A. I mean all the employees in the two warehouses, about 40 in number.

(Testimony of Robert Anger.)

Q. Where did the Stokely men turn in their time cards?

A. Turned them in on the opposite side of the street, in the Stokely warehouse to their foreman.

Q. How do you know they did that at that time?

A. Because they were through with their work; they were rather slack and they were through at that time. [143]

Q. All right. Go ahead with your account of what happened at 4:30.

A. When we went to turn our cards in Mr. Torenson wasn't there. He had disappeared from his office and that is something that hadn't happened for a year and a half, that he had been foreman of the warehouse. He had always been there to receive our cards. This night he wasn't there. So we waited for two or three minutes and he didn't show up. So we finally put all of our cards on his desk and left them and went on our way.

Q. You left the cards on his deek?

A. That is right, on his desk.

Q. Did anybody try to find Torenson?

A. I don't think anybody went out to look for him. We waited a few minutes, possibly three or four, in the office.

Q. Then what did you do?

A. I went home and got ready for the meeting.

Q. Did you go to the meeting that night?

A. I did. We were initiated.

Q. Where was the meeting held?

A. We all met at the hall and then we went to

(Testimony of Robert Anger.)

the Teamsters' Hall just a block and a half away.

Q. You are referring to what hall?

A. The Weighers and Warehousemen's Union, 908 West Seventh street. [144]

Q. Were all of the warehousemen who had indicated their intention of joining the union present at the meeting?

A. They were.

Q. Any not present?

A. Not that I recall.

Q. How long did the meeting last?

A. Possibly two hours and a half.

Q. When you showed up at 4:30 to turn in your time cards, and you found Mr. Torenson was not present, did you feel that it was permissible for you to leave nevertheless?

A. Yes; I had left my card on his desk lots of times when he wasn't there.

Q. You had?

A. Yes, but only my individual card.

Q. Do you know whether any of the other men ever did that?

A. I believe they have, yes.

Q. You don't know?

A. I am not certain of it, but I think they have.

Q. What time did the meeting adjourn?

A. The initiation?

Q. Yes.

A. Around 10 o'clock, a quarter to 10.

Q. What did you do then?

A. Went home.

(Testimony of Robert Anger.)

Q. Do you know whether any of the night shift men returned [145] to work?

A. Yes.

Q. Did they tell you they were going to?

A. Yes.

Q. Who were they?

A. Larry Doyle and Al Pio was two that I know returned.

Q. Did you show up for work the following morning?

A. I did, at seven o'clock.

Q. And what was the situation that you found when you got there?

A. The gate was closed at the back where I generally entered; the side doors were closed where we entered from the street, blocked.

Mr. Edises: May we have a five minute recess, Mr. Examiner?

Trial Examiner Traynor: Yes, we will take a five minute recess.

(At this point a recess was taken after which proceedings were resumed as follows:)

Q. (By Mr. Edises) Did you try to get in?

A. I couldn't get anywheres near the door to get in.

Q. Why not?

A. There was guards in the street; the crowd was kept back from the doors; the crowd of men that went to work were all out in the middle of the street. [146]

Q. Who were present at the time, what men?

(Testimony of Robert Anger.)

A. All the men were in the street that worked there in the warehouses.

Q. And did you speak to anyone about going to work?

A. No.

Q. Why didn't you?

A. I couldn't get to the door. We were told to stay away.

Q. Who told you to stay away?

A. The guards.

Q. What did they say?

A. Well, they said there was a strike on and that we would have to keep out in the street, out of the way.

Q. Told you to keep out of the street out of the way—where did you stay?

A. On the opposite side of the street in a big vacant lot.

Q. Did you see any of the officials of the company that morning?

A. Yes, I saw Joe Remington, the general plant superintendent.

Q. Where did you see him?

A. Out in the street.

Q. Did you speak to any of them?

A. No.

Q. About how many guards were present?

A. Well, there was two of the regular watchmen that were on [147] duty there in the street; there were two special detectives—I don't know who they were—wearing badges sitting in a car.

(Testimony of Robert Anger.)

Q. Any of them armed?

A. That I couldn't say.

Q. Well, what did you and the men decide to do at that time?

A. Well, there wasn't practically any decision made right at that time. We milled around there in the street for a part of the morning and then the police ordered us away. We were forced up the street a block away from the plant.

Q. Did you, or any of the other men, make any effort to get in touch with the company officials?

A. I didn't.

Q. Who did, do you know?

A. I don't know whether any of them did or not.

Q. Was a picket line formed?

A. A picket line was formed later in the day.

Q. And where did that picket line stay?

A. Around 57th avenue.

Q. Where was the picket line with reference to the plant?

A. Well, the plant is down practically about two blocks from East 14th street, and they kept us up about a block away from the plant and let us picket from there out to 14th street. [148]

Q. What did you form the picket line for?

A. To stop trucks from going in and out, telling them there was a lockout.

Q. What do you mean by "stop trucks"? Did you intend to physically stop them?

A. No, just hail them and tell them.

(Testimony of Robert Anger.)

Q. Do you know whether any trucks failed to go through the picket lines?

A. They did.

Q. Was that on account of the application of physical force by the pickets?

A. Oh, no.

Q. Under what circumstances did they fail to go through the lines?

A. Some of them were being manned by union drivers. As soon as they learned there was a lock-out at the plant they turned around and went away.

Q. Do you know of any instances yourself of that refusal to go through the lines?

A. Do I know of instances?

Q. Yes.

A. Yes.

Q. Can you cite them specifically?

A. No, I can not.

Q. Do you know of any Santa Cruz products that were held [149] up, kept out of shipment as a result of the establishment of the picket lines?

A. I know that the trucks that were operating for the Santa Cruz Company were held up.

Q. Were those trucks that normally carried the products out of the state of California?

A. No, they were trucks that were hauling to the wharves.

Q. Hauling to the wharves?

A. From the plant to the wharves.

Q. Do you know whether there was any stoppage of Santa Cruz or Stokely shipments as a re-

(Testimony of Robert Anger.)

sult of—By the way, let me pass that question for the present. Was the Santa Cruz plant declared unfair, or in any way marked out by the union or the I. L. A.?

A. It was.

Q. Exactly what was done?

A. The teamsters were called upon.

Q. What?

A. The Teamsters' Union.

Q. What action did the union take as to this refusal to permit the men to return to work?

A. Pulling drivers off of trucks who attempted to go in there.

Q. What did you say?

A. Pulling the union drivers off of trucks. [150]

Q. When you use the word "pulling" do you have reference to physical handling?

A. Oh, no.

Q. Well, what do you mean by that word?

A. Simply calling them to the hall, I presume.

Q. Was any official action or declaration made by the I. L. A., or the Warehousemen's Union in regard to Santa Cruz?

A. That I couldn't say at that time.

Q. Do you know whether any Santa Cruz goods were held up at the wharves?

A. I do.

Q. When and where, and what goods?

A. Well, just the exact dates I couldn't give you, but I saw a lot of the goods stacked in the wharves myself.

(Testimony of Robert Anger.)

Mr. Edises: Just a minute. This can be off the record.

Trial Examiner Traynor: Off the record.

(Discussion off the record.)

Q. (By Mr. Edises) What goods did you see held up at the wharves after the lockout?

A. What kind of goods?

Q. Yes, what goods?

A. Spinach, pork and beans.

Q. And did you notice the destination of those goods as it appeared on the cartons?

A. No, I did not at that time. They were simply marked as [151] hot cargo and passed them by.

Q. How long did that cargo stay on the wharves?

A. I think it laid there, some of it, for three or four weeks.

Q. Now, what do you know about it—I want to know what you know of your own knowledge.

A. I can't be definite because I didn't see it placed in there, and didn't see it go out; but I saw the same stacks of goods lying in the same place for a period of two weeks, I know personally.

Q. Was that an unusual occurrence? I mean, were the goods ordinarily stacked and remained on the wharves for that period of time?

A. No.

Q. How long did they usually stay on the wharves after set there?

A. Sometimes not more than a day.

Q. Have you had any conversations with any of the officials of the company since the lockout?

(Testimony of Robert Anger.)

A. I have had no conversation, but I heard a little conversation.

Q. I am not interested in what you heard.

A. I was present at the time.

Q. All right. Who was present at that conversation?

A. Mr. Woods and myself. [152]

Q. And who else?

A. Mr. Huddleson.

Q. And when was this conversation?

A. The date I couldn't give you; but it was just two or three days after the lockout.

Q. Where did it take place?

A. Right in front of the plant.

Q. Were you on picket duty at the time?

A. I was.

Q. What was said and done at that conversation?

A. Mr. Woods came to me and we asked permission of the police to go through the lines. He wanted to see Mr. Huddleson. He was the business agent. I walked down with him. Mr. Huddleson was sitting on the running board of a car out in the street, smoking, at the time.

Mr. Woods went up and asked him if he considered the agreement that had been mailed him and if he would consider taking the men back.

Q. What agreement are you referring to?

A. I am referring to the union agreement that was mailed Mr. Huddleson, I believe, a few days before we had our initiation meeting.

Q. You mean the proposed agreement?

(Testimony of Robert Anger.)

A. Yes.

Q. That was mailed to Mr. Huddleson before the union ini- [157] tiation meeting?

A. Yes.

Q. Go ahead with your account.

A. Mr. Huddleson made this statement: that he would positively have nothing to do with the union, nor let a union be organized at his plant. That was all that I heard. We left him.

Q. Any other conversations?

A. None whatever.

Q. Have you a list of the men who signed the applications for membership in the union?

A. No, I have not.

Q. Didn't you keep any record of them at all?

A. I did at the time but since that time it has been destroyed, lost. They have it, though, in the union.

Q. I show you a bundle of papers, each of which is headed, "International Longshoremen's Association, Local 38-44, Weighers, Warehousemen and Cereal Workers," and ask you whether you have seen these before.

A. (Examining applications) All of them.

Q. What are they?

A. Applications to become members of the union.

Q. Did you hand those to the men to be filled out?

A. I had them in book form and as they were filled out and the money paid over I turned the money and the applica- [154] tion blanks——

(Testimony of Robert Anger.)

Mr. St. Sure (Interrupting): Just to shorten the matter, if you wish to read the face of one of those applications, and then have Mr. Anger call off the names that signed them, perhaps it will shorten the matter. We have no technical objection, or particular objection to the method of putting the information in that you apparently want in the record.

Mr. Edises: Thank you. I will read one of these applications into the record. All of the others are identical.

At the top is the date.

BOARD'S EXHIBIT NO. 1.

"8-8-1935

"International
Longshoremen's Association
Local 38-44
Weighers, Warehousemen and Cereal Workers
Phone GArfield 6990

"I, Homer White do hereby make application to your honorable body for membership. Should my application meet with your approval, I promise a

(Testimony of Robert Anger.)

faithful obedience to the Laws, Rules and Regulations of your Association.

Am employed by Santa Cruz

Foreman's Name Torensen

How long employed 1 month [155]

My address 1622—13 Ave. Oakland

My age 23 No. 2175

Voucher Ivo Rocha Book No. 0-278

Voucher ..... Book No.....

Voucher ..... Book No....."

Q. (By Mr. Edises) Will you read off the names of the persons whose applications appear there?

Mr. St. Sure: I further suggest, in addition to the name, that you also read the name of the employer. Some of them read Stokely and some of them read Santa Cruz. I suggest he read the name of the man and then read the name of the employer as listed there.

A. Clifford Algrava, Santa Cruz Fruit Packing Company; Pasqual Arieta, Santa Cruz Fruit Packing Company; Manuel Blanco, Santa Cruz Fruit Packing Company.

Q. (By Mr. Edises) I suggest that you just say, to shorten it, instead of "Santa Cruz Fruit Packing Company," "Santa Cruz," or "Stokely" as the case may be.

A. Nick De Carlo, Santa Cruz; Orville Gardner, Santa Cruz; Frank Granada, Santa Cruz; Rufus Hughes, Santa Cruz; Connie Martin, Santa Cruz Gerald Olivera, Stokely; Joe Pepitone, Santa Cruz;

(Testimony of Robert Anger.)

[156] W. Bedford, Stokely; Lee Henry, Santa Cruz; John Reckling, Santa Cruz; E. G. Resburg, Santa Cruz; Ivo Rocha, Santa Cruz; George Rose, Santa Cruz; Wm. Blackwell, Santa Cruz; Lester Scott, Santa Cruz; John Valin, Stokely; Fred Venturi, Stokely; Dave Rodrigues, Santa Cruz; Larry Doyle, Santa Cruz; George Costa, Santa Cruz; Jack Baker, Santa Cruz; Robert Anger, Santa Cruz; Mannie Frates, Stokely; Luther Dolin, Santa Cruz; John W. Joseph, Santa Cruz; Joe Carmo, Santa Cruz; Alfred Pio, Santa Cruz; Frank Phillips, Santa Cruz; Kenneth Toresen, Santa Cruz; F. Ellis, Stokely. That is all. [157]

Mr. Edises: I offer these applications in evidence as Board's Exhibit No. 1.

Trial Examiner Traynor: They may be received as Board's Exhibit No. 1.

(The applications referred to, 34 in number, were received in evidence and marked Board's Exhibit No. 1, Witness Anger.)

Mr. Edises: May I be permitted to excuse Mr. Anger now, subject to recalling him for possibly one further matter which, I feel, may appear in better order and better sequence at a later time? Have you any objection?

Mr. St. Sure: No objection.

Trial Examiner Traynor: So ordered.

Mr. Edises: Just a minute! Is there any cross examination?

Mr. St. Sure: I prefer to cross examine him after his testimony is completed.

(Testimony of Robert Anger.)

Mr. Edises: Then I will withdraw my request to recall him for additional new matter at a subsequent time.

Mr. St. Sure: Later on, if you desire, and if something comes along and you want to recall him, there will be no objection to your doing so, as far as I am concerned, if it is agreeable to the Examiner.

Trial Examiner Traynor: All right, proceed with the cross examination.

Mr. St. Sure: I am in the position, Mr. Examiner, and [158] I will so state, that my cross examination is not deemed to waive our previous objections, and so forth.

Trial Examiner Traynor: That is right.

Cross-Examination.

Q. (By Mr. St. Sure) You mentioned the fact that following the establishment of the picket line out there near the Santa Cruz plant, that you personally saw certain merchandise from the Santa Cruz Fruit Packing Company which was on the docks for a period of two weeks, to your knowledge?

A. Yes.

Q. Do you know what was the occasion for it remaining there for that period of time? You used the expression, "Hot cargo." Will you just explain, for the purpose of the record, just what you understand hot cargo to be?

A. Cargo that should not be handled by stevedores simply because of the unfair conditions at the plant in which it was put up.

(Testimony of Robert Anger.)

Q. In other words, as I understand the situation from your answer, and perhaps from some of my own information on the subject, the stevedores —By the way, which dock was it that you saw, or which terminal was this merchandise that you refer to?

A. Encinal.

Q. And the stevedores who were employed there, and the men who handled cargo at Encinal Terminal, are union men? [159]

A. They are.

Q. And do you know what union they belong to?

A. What union?

Q. Yes.

A. The I. L. A.

Q. And do you know what local of the I. L. A.? Is it the same local that you men joined at the Santa Cruz plant?

A. Some of them, the warehousemen, 38-44.

Q. They belonged to Local No. 38-44?

A. The stevedores belonged to 38-79 in San Francisco.

Q. But the employees who handled the movement of the cargo on the docks at Encinal Terminal were members of 38-44, a local or branch of the I. L. A., the International Longshoremen's Association?

A. Not the stevedores. The stevedores were in San Francisco.

(Testimony of Robert Anger.)

Q. I will put it this way: Both the stevedores and the warehousemen belonged to locals of the I. L. A.?

A. Yes.

Q. Some of them, the warehousemen, were members of 38-44?

A. Yes.

Q. Any stevedores who came from across the bay, and did a portion of the operation of handling cargo, belonged to 38-79?

A. That is correct.

Q. And you say those men at the terminal refused to handle the merchandise from the Santa Cruz cannery? [160]

A. Yes.

Q. During the period of this time that you had the picket lines established at the Santa Cruz cannery?

A. Correct.

Q. Do you know under what circumstances that cargo was finally moved? Do you know that it was moved?

A. I don't know that it was moved, but it disappeared from the warehouse because I have worked there since it has been shipped.

Q. You do know, don't you, Mr. Anger, that Judge Sloss, as Federal arbiter, directed that that cargo be moved, and stated that the refusal to move it was a violation of the agreement, of the award of October of 1934?

A. I read his statement in the paper.

(Testimony of Robert Anger.)

Q. And you were familiar with that conclusion Judge Sloss arrived at?

A. Yes.

Q. Were you present at any union meeting, Mr. Anger, or other meeting at which the policy was discussed or determined upon to declare the cargo of the Santa Cruz Fruit Packing Company to be hot cargo?

A. I was not.

Q. Now, you said that certain trucks going in and out of the Santa Cruz plant, during the time the picket line was established there, that the drivers declined to go past the [161] picket line.

A. Yes.

Q. Do you know whether any of those men who declined to go past the picket line were threatened by any of the pickets there with violence or harm to themselves personally if they did go by the picket line?

A. I was on that picket line from the beginning until the end, three and four times a day and I never heard any threats made by any one of the Santa Cruz men against any driver. They would simply flag them and tell them there was a lockout. We were trying to conduct peaceful picketing and we were warned to do so by the police.

Q. Do you know personally, Mr. Anger, of your own knowledge, of any incidents, wherein the driver from the El Solyo Ranch drove his truck into the Santa Cruz plant, and as he was leaving there rocks were thrown at him?

(Testimony of Robert Anger.)

A. The only thing that I know about the conditions that existed in that case was what I read in the newspaper.

Q. Then I take it, from your statement, that you do not know of your own knowledge of any instance in which any violence occurred?

A. Absolutely, not one.

Q. About how many men were present there ordinarily on this picket line during the time the picket line was maintained? Were there any particular number? [162]

A. We tried to work about 15 to 18 men on a shift. Those shifts were 12 hours.

Q. And the picket line was maintained 24 hours a day?

A. Yes, sir.

Q. Who was in charge of the pickets? Was anyone particularly designated to be in charge of the pickets?

A. There was captains designated from time to time, from day to day.

Q. Each day a different man, or somebody in particular?

A. Not every day a different man. We tried to run them weekly; various different men were appointed captains of the pickets.

Q. Did the pickets who were there, to your knowledge, talk with any of the other employees, that is, the people working in the cannery as they came to work or left their work?

A. Not to my knowledge.

(Testimony of Robert Anger.)

Q. Pardon me?

A. Not to my knowledge did I ever see any of the other men talking to them, but I personally talked with some of them.

Q. You talked with some of them?

A. I did.

Q. Did you ever endeavor to persuade any of them not to continue working there under the conditions existing at the time?

A. I did. [163]

Q. And those people that you talked with, were they people who worked in the cannery?

A. One was a watchman, Gene Richie.

Q. Any others?

A. Yes, the can stacker, Jimmy Fleeman.

Q. Now, you mentioned the fact that trucks operated by the Santa Cruz Fruit Packing Company were unable to go in and out during the time, that is, did not go in and out during the time that the picket line was there. Did I understand you correctly in that?

A. In one way, yes. The trucks, some of them went out the first few days, and from time to time they kept taking the drivers off until finally it got to where it was practically zero and there was no trucks moving.

Q. Now, were these men that you say—you used the expression "were taken off," and I am assuming that by that you mean, as you did on your direct examination, not by physical act, but by mere persuasion and conversation. Were any

(Testimony of Robert Anger.)

of these men taken off these Santa Cruz trucks men who were not members of the union, of any union, as far as you know?

A. That I couldn't say.

Q. Did you yourself talk to any of the men who were driving Santa Cruz trucks?

A. I did not.

Q. How many trucks of the Santa Cruz Fruit Packing Company [164] were operating, do you know, prior to the time this difficulty arose?

A. I couldn't say exactly, but I think——

Q. (Interrupting) I mean, was it two or three, or two or three dozen?

A. I understood that Hartman had seven trucks he was operating.

Q. Who was Hartman?

A. I believe he was a contractor for Mr. Huddleson's hauling. He had been there a long time hauling.

Q. Is it your understanding that the hauling operation was under contract to Mr. Hartman?

A. That is what I understood.

Q. And what did you see those trucks being used for? I mean, what type operation did those trucks perform?

A. Mostly hauling the finished product to the plant, that is, from the plant to the wharves.

Q. Were those trucks used at all in bringing in fruit and vegetables from the field to the plant?

A. They were, yes, hauling spinach and hauling beans.

(Testimony of Robert Anger.)

Q. And during the time this picket line was maintained out there, you say the operation of those trucks ultimately ceased?

A. They were hampered, yes, to a great extent.

Q. You say the cessation from that activity, or the stopping [165] of those trucks, as you understand it, was because the men who were driving them declined to drive them any longer?

A. The majority of the drivers of those trucks, I believe, were union men and they were called off through the teamsters' organization.

Q. Now, were other trucks, other than these that were referred to, these that have been referred to as Santa Cruz trucks, stopped as they were going in or out of the Santa Cruz plant?

A. They were.

Q. What type of trucks were those? I mean, what were they carrying? What was the nature of their business, if you recall?

A. They were hauling in fruit from the ranches.

Q. And were those men, do you know, who were driving those trucks from the ranches, members of any union?

A. I don't think they were; I don't know. They were farmers, I believe.

Q. They were farmers?

A. I believe so.

Q. Some of them were driving their own trucks bringing in their own products, is that your understanding?

(Testimony of Robert Anger.)

A. I can't say, but I heard they were farmers. That is all I know of them.

Q. Do you know what argument was used to persuade those [166] farmers from coming in with their own fruit or vegetables to the Santa Cruz plant?

A. There was no argument used. They were simply flagged and told there was a lockout at the plant, and asked them not to cross the picket line.

Q. Do you know whether any of them said they wanted to go in anyway?

A. I believe they did go in.

Q. And what was said to them?

A. Nothing more could be said to them. They had police protection.

Q. Did they need it?

A. I don't——

Mr. Edises (Interrupting): Just a moment! I object to that.

Trial Examiner Traynor: I think that can be stricken out.

Q. (By Mr. St. Sure) Well, were any of those men, to your knowledge, these farmers who came in with their products, or with products, told not to come back, by any of the pickets?

A. Not that I know of.

Q. Now, were there any delivery trucks or wagons taking merchandise in, say, to the cafeteria, were any of those trucks stopped, milk and bread trucks stopped?

A. Yes. [167]

(Testimony of Robert Anger.)

Q. And on the same basis the pickets called their attention to what you term the lockout, and asked them not to go through?

A. I flagged a number of them myself, yes.

Q. Now, at the time this difficulty occurred, which you referred to as a lockout, was the Santa Cruz Fruit Packing Company working 24 hours a day, do you know?

A. Yes.

Q. And for how long a period of time had it been working 24 hours a day? Do you recall how long—I mean your best judgment—whether a month, or a week or two?

A. I think it was running around a month or so.

Q. About a month?

A. Yes.

Q. They don't operate the year round 24 hours a day?

A. No.

Q. Just certain seasons when they do?

A. Yes.

Q. This particular season, and the particular reason for the operation, being the day run and the night run at that time, was what, what season was it, peaches?

A. Peaches, yes.

Q. And at the same time were they canning pork and beans? Isn't that a rather continuous operation, or wasn't it at that time? [168]

A. That runs from month to month.

Q. What?

(Testimony of Robert Anger.)

A. I say, it seems to run from month to month, pork and beans.

Q. That was running day and night also?

A. Yes.

Q. Now, you have mentioned that trucks came to the plant of Santa Cruz, and goods were loaded onto those trucks to be taken to the northwest, Seattle, and the state of Washington, and so on. Those trucks weren't Santa Cruz trucks, like these other ones we have been talking about, but they were haulers, in the business of hauling merchandise?

A. Up and down the coast, yes.

Q. I assume that you have no personal information concerning the nature of the actual transactions when the goods were sold, that is, the contract of sale, between the Santa Cruz Company and its purchasers?

A. Absolutely none.

Q. Now, you related a conversation that you had with Mr. Woods, or rather, that Mr. Woods had with Mr. Huddleson?

A. Yes.

Q. And when you were present?

A. Yes.

Q. And you say that it was a day or two after the picket line had been established? [169]

A. Yes.

Q. And up to that time had you talked with Mr. Torenson, or with Mr. Huddleson, or anybody else connected with the Santa Cruz plant, that is, any

(Testimony of Ernie Reich.)

of the officials, or the foreman or the superintendent, or any person there about the strike conditions?

A. None of them.

Q. On this occasion you say you asked the police if you could go through the lines and go down to where the office was, to talk to Mr. Huddleson?

A. Yes, sir.

Q. And what is your recollection of that conversation as to what Mr. Woods said and what Mr. Huddleson said?

A. Mr. Woods asked him something in regard to the agreement that had been mailed him, and Mr. Huddleson made the statement that he would positively have nothing to do with the union. The conversation was very short and very brief. And then we were on our way.

Q. That agreement that is referred to, had you seen that agreement?

A. I had not.

Q. Did you know what that agreement contained at the time that Mr. Woods mentioned it to Mr. Huddleson?

A. No. [170]

Q. Did you know what demands were made in behalf of the men, that is, yourself and the other employees, in this agreement or proposed agreement?

A. I don't think there was any demands made. I think the agreement asked for wages and hours.

(Testimony of Robert Anger.)

Q. I don't want you to interpret it in an unpleasant sense when I say "demands". I do not mean that. Did you know what the terms of the proposed agreement were?

A. They asked for an eight hour day, 62½ cents an hour, and overtime.

Q. Had you, or had any of your fellow-employees to your knowledge, discussed those requests, or those proposed terms with the management, or anyone connected with it?

A. I don't think they had. I hadn't.

Mr. St. Sure: Shall we recess at this time?

Trial Examiner Traynor: Yes, until 2 o'clock.

(Thereupon, at 12 o'clock noon a recess was taken until 2:00 o'clock p. m.) [171]

After Recess

(The hearing was resumed at 2:00 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Traynor: Are counsel ready to continue?

Mr. Edises: Ready.

Mr. St. Sure: Ready, Mr. Examiner.

Trial Examiner Traynor: Mr. Anger will take the stand.

Robert Anger, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross Examination (Continued)

Q. (By Mr. St. Sure) Mr. Anger, you described in some detail this morning the work in the ware-

(Testimony of Robert Anger.)

house, or the warehouse department of Santa Cruz. Could you tell us, as the cans come off the machine, whatever term you apply, describe the process. For instance, you have the pork and bean line, and various lines, and at the conclusion of the operation you have a completed can except it is to be labeled and stacked, and so on, after that; is that correct?

A. You mean after they come from the cookers and retorts?

Q. Yes.

A. Yes.

Q. Now, as those cans come from the cookers and the retorts they are placed in baskets?

A. Some of them are in baskets and some of them are in [172] trays and are stacked and cooled.

Q. They are taken from the cannery proper into the warehouse?

A. When they are cooled.

Q. And that is a continuous operation, from the machine to the place where they stand to be cooled and then moved on to the warehouse, is that correct?

A. For the day's run, yes.

Q. On this occasion, this evening when the meeting was to be held, what, if any, effect would the absence of the day crew from say 4:30 in the afternoon on, and the night crew until say 10 o'clock in the evening, have upon the operation of the remainder of the cannery? Would it have had any effect?

(Testimony of Robert Anger.)

A. The warehousemen had nothing to do with the cannery. They only received the cans after they came from the cookers and retorts and cooled and trucked into the warehouse.

Q. And the very removing of those cans, after they were cooled, was a part of the operation to clear the cannery of the cans as they arrived there?

A. That was done during the morning. The floor was cleared for the day's run; and the following morning that day's run was cleared.

Q. What did the night shift in the warehouse do? Did they move any cans at all from the cannery into the warehouse?

A. They were labeling pork and beans as they came from [173] the cannery into the warehouse.

Q. Was there any actual movement of cans while the night shift was at work there at about that time of the year, from the cannery into the warehouse?

A. Yes.

Q. And your thought would be that if the crew in the warehouse were away, it would mean the cans would wait until they came back before they were moved into the warehouse; is that it?

A. I believe I explained that in my former statement, that is, that Mr. Torensen said it would give him a chance to arrange his work, and I presume that was what was meant.

Q. That is, you thought by that he meant he would get somebody else to take your places and get

(Testimony of Robert Anger.)

some one else to move them during the interval?

A. Yes. The reason I make that statement is that there was a number of the can stackers who could work on the machines and label.

Q. Well, on this afternoon that you say you had these conversations with Mr. Torenson, when you and the others there left at 4:30 in the afternoon, you say no effort was made to locate Mr. Torenson at that time?

A. We didn't go out to look for him, no, because we didn't know where he was.

Q. And the time cards were simply left on his desk, a [174] group of them, all of them?

A. Yes.

Q. Now, on the following morning you say you went back to the plant to report for work about 7 o'clock?

A. 7 o'clock.

Q. Was that your usual hour for going to work?

A. Yes.

Q. And when you arrived there did you find both the day and the night crew there?

A. I don't recall as to the night crew because there were a number of men in the crowd; but I do recall all the day crew.

Q. And you say there were two regular night watchman there and you saw two other men with stars or badges sitting in an automobile?

A. Yes.

(Testimony of Robert Anger.)

Q. Did you, or any one else there, ask to talk with Mr. Torenson, or Mr. Huddleson, or any one else?

A. I didn't, because we couldn't get to see them. We couldn't go near the place. We were ordered away.

Q. Did you make the request of any one that you wanted to see or talk with them?

A. There wasn't any one to make the request to.

Q. What kept you away? Was there some one there?

A. There were guards there. [175]

Q. Armed, you say?

A. Armed, and also policemen.

Q. I thought when Mr. Edises asked the question, if the men were armed, you said you didn't know.

A. I am not certain as to that. I will recall that statement; but there were guards.

Q. You knew these men were the regular watchmen, didn't you? You had worked with them, and had seen them around there?

A. I knew two of them were the regular watchmen.

Q. Did you ask them, or any one else in your presence ask them, to send word to the management that you would like to talk to them?

A. I didn't hear any one make any statement to them, ask them anything at all.

(Testimony of Robert Anger.)

Q. This agreement that you say was mailed to Mr. Huddleson, or to the Santa Cruz Fruit Packing Company, had you and the other men working with you gone over that agreement, or read it?

A. No, we had not.

Q. Whose agreement was it? I mean, whose idea was it? Did it come from the men or some one else?

A. It came from the union.

Q. From the union?

A. Yes. [176]

Q. Had you had any meeting of the men yourself, and the others employed there, to discuss what that agreement contained?

A. We discussed it with our business agent, as to hours and wages and overtime.

Q. When was that?

A. Several days previous to the lockout.

Q. Did you discuss with your business agent the matter of any provision in the contract requiring that all persons employed belong to the union, or be discharged?

A. I did not.

Q. Did you know that the contract, or the proposed agreement, contained such a provision?

A. I couldn't have known it, because I didn't read it.

Q. Now, between this first day that you say the morning you reported back to work following the meeting, and this time two or three days later when you say you were present when Mr. Woods talked

(Testimony of Robert Anger.)

with Mr. Huddleson, did you, or any one that you know of your group among the men, say any word or ask to make any request to talk with the management, or any one connected with it, concerning the situation?

A. We did not. It was supposed to be done by our representatives, our business agent. He represented us as a body.

Mr. St. Sure: I think that is all. [177]

Redirect Examination

Q. (By Mr. Edises) Do you know if Santa Cruz cargo is still hot?

A. If it is now?

Q. Yes.

A. It is with the union men, I believe, as far as purchasing it over the counter is concerned. I believe it is moving on the wharf, some of it.

Q. That is what I am referring to. Do you know whether the stevedores, for example, are now handling Santa Cruz cargo?

A. I think they are.

Q. Are the can stackers members of your union?

A. They are not.

Q. Did Mr. Torenson say anything to you, during your conversations with him in regard to the men getting off to go to the meeting, about who he would get to take the places of the men?

A. No, nothing was said at all.

Q. Did he say, however, that he would be able to make arrangements?

(Testimony of Robert Anger.)

A. When I told him this he thanked me and said that that would give him a chance to make arrangements for the work. That was all that was said.

Q. About how many men are needed for the job of trundling the cans from the cannery into the warehouse? [178]

A. About how many men?

Q. How many men are normally used for that job?

A. One man was doing the most of it with an electric truck.

Q. When you came to the plant the morning after the lockout what, if anything, was said by these watchmen to you?

A. There was only one of the watchmen that I spoke to, Gene Richie.

Q. He told me to keep away from the plant. The police on duty also told me.

Q. Did the members of the union know what demands were going to be made in connection with wages and hours?

A. Yes, they knew.

Q. When did the men discuss that?

A. We had talked it over a couple of weeks before that time.

Q. Was that at a regular meeting?

A. No, just a meeting among ourselves.

Q. Was the business agent of the union authorized to carry on negotiations for you?

A. He was.

(Testimony of Robert Anger.)

Q. Was he authorized to submit a proposed agreement?

A. To Huddleson?

Q. Yes.

A. Yes.

Mr. Edises: That is all. [179]

Mr. St. Sure: No further questions.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Mr. Reich.

ERNIE REICH,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. Ernie Reich.

Q. Are you married?

A. Yes.

Q. Any children?

A. One.

Q. How old?

A. A year and a half.

Q. Where do you live?

A. 1839 70th Avenue.

Q. Were you employed by Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you first go to work there?

(Testimony of Ernie Reich.)

A. I first went to work in Santa Cruz for them, and then was transferred up here when he bought his new plant down at 57th Avenue. That was about three and one-half years ago.

Q. And what was your job at the Oakland plant of the Santa Cruz? [180]

A. Laborer.

Q. And were you later promoted to a different job?

A. I was.

Q. What was that?

A. Assistant warehouse foreman.

Q. When was that promotion?

A. About two years ago.

Q. And have you since that time, up until the recent lockout, been employed as assistant warehouse foreman at the Santa Cruz plant?

A. I have.

Q. Will you describe the nature of your duties and work as an assistant foreman?

A. I had charge of all the men employed in the warehouse. I took orders from our foreman, Mr. Torenson, and carried out his plans. I checked the boys in at times, and I checked them out at times.

Q. What authority did you have with reference to the men?

A. I didn't have the authority to hire anybody or fire anybody.

Q. Who did the hiring and firing?

A. Mr. Remington.

(Testimony of Ernie Reich.)

Q. What were Mr. Torenson's duties in connection with the hiring and firing? [181]

A. He didn't have any authority to hire or fire until about a month before we were locked out.

Q. And at that time did he receive that authority?

A. Yes.

Q. And do you know whether he did any hiring or firing of men after that time?

A. He did, yes.

Q. Will you describe in detail the operations which are carried on in the warehouse, that is, from the time that the goods are received until the time that they go out?

A. Well, there are various ways. It all depends on what the product is. We have different operations on different varieties of fruits; pork and beans are a different set-up too.

Q. Let's take peaches, for example.

A. Peaches are trayed up on trays in the cooking room and trucked out by one man with an electric truck, to the warehouse to be cooled. After they are cooled——

Q. (Interrupting) How long does the cooling take?

A. Usually the next day, the following day; it takes about 24 hours. After they are cooled they are either stacked or labeled and shipped.

Q. Now, will you describe the process of shipping, that is, how that is carried out?

(Testimony of Ernie Reich.)

A. Off of the trays—if we didn't have enough stock to [182] fill our order, we usually labeled up all the stock we did have and held it over until it was complete, and then it was shipped. Other orders that were completed at the time, they were shipped at once.

Q. What means of transportation were used in shipping?

A. Cars, railroad cars and trucks.

Q. Was there a spur line up to the plant?

A. Yes.

Q. Do you know what line that was?

A. It is the Southern Pacific and Western Pacific, I believe.

Q. Do you know whether that spur line was owned by the company or by the railroad?

A. I don't know.

Q. Did you have charge of assigning the men to different operations?

A. I did.

Q. What was your practice in regard to assigning the men for jobs?

A. Well, they done almost all the jobs in the warehouse. I wouldn't keep one man on one job unless it was the labeling machine operator. He was the only man that I didn't change around to the various jobs.

Q. And all the other men, were they at various times assigned to trucking and loading? [183]

A. They were.

(Testimony of Ernie Reich.)

Q. Is the process materially different in regard to tomatoes?

A. No.

Q. Pork and beans?

A. Pork and beans, there is a difference.

Q. Will you describe that process?

A. Pork and beans are cooked in retorts and brought out in baskets into the warehouse, pushed in by the cook room force, and they are labeled right away and part of them are shipped and others are stored right there at the warehouse.

Q. Is any cooling period necessary, in the case of pork and beans?

A. No, not over 15 or 20 minutes.

Q. Did the cartons contain a statement of the destination to which they were going?

A. They did.

Q. Will you mention some of the places to which peaches were consigned?

A. One of our biggest buyers in peaches was the First National Stores.

Q. Where is that located?

A. In Boston.

Q. Can you state approximately what percentage of your peach crop, canned goods, was sent to the First National [184] Stores?

A. Out of about 300,000 cases we would ship about 25,000 or 30,000 cases to the First National Stores.

Q. And did that shipment take place over a period of time?

(Testimony of Ernie Reich.)

A. Yes.

Q. During approximately what period?

A. Well, in peaches it would be about a year. We would ship to them constantly.

Q. About how many cases per day of all products were placed in the movement for transportation?

Mr. St. Sure: Just a moment, if the Court please. I do not want to object to the form, but I feel that the assumption that any goods or merchandise were placed in transportation by the Respondent is assuming the very thing in issue here. There is no objection to the describing of the actual process of what was done, and the mechanics of it, but as to the legal effect, I take it that that is the thing that is before yourself as Examiner, and for determination by the Board.

Mr. Edises: I will redraft the question, Mr. St. Sure.

Q. (By Mr. Edises) About how many cases a day, of all products, were loaded into cars or trucks, or other means of transportation, during the busy season?

A. Does that include the Stokely warehouse and the Santa Cruz too? [185]

Q. Let's take first the Santa Cruz.

A. I would say on an average of 3,000 or 4,000 cases per day.

Q. And for how long a period did this last?

A. That is almost all year round.

(Testimony of Ernie Reich.)

Q. Returning for a moment to peaches. I take it that is your largest fruit crop?

A. Yes.

Q. About what period of time would normally elapse from the time the raw peaches were received at the plant until the time that they were trucked out into cars and trucks?

A. I would say about half of the pack wouldn't remain in the plant over a period of five days.

Q. Do you know how much of the peach crop was sent to points outside the State of California?

A. I would say 80 per cent.

Q. Will you name the chief points of consignment of peaches?

A. Practically the large cities in the East.

Q. Can you name some specifically?

A. Boston, New York, Chicago, Philadelphia, Connecticut—a lot of others.

Q. Do you know the names of some of the more important consignees of peaches?

A. First National Stores. [186]

Q. Boston?

A. Boston. Nation Wide Service Grocers, and I believe they are in Boston. Seeman Brothers, New York. Those are the main ones. Those are four or five of the biggest consignees.

Q. What was your largest vegetable crop?

A. Spinach.

Q. And do you know some of the points of consignment on cases of spinach?

A. Same places.

Q. Same places?

(Testimony of Ernie Reich.)

A. Yes.

Q. Can you state approximately what percentage of your spinach product was destined for points outside the State of California?

A. I would say about 90 per cent.

Q. How much?

A. About 90 per cent.

Q. Do you know any foreign ports that fruits or vegetables were sent to?

A. London, Manchester, New Castle, Moscow, Leith.

Q. During the canning year was there a pretty constant movement of your products to these foreign and out of state points, or was it confined to certain periods of the year, certain times? [187]

A. It was consigned to certain periods of the year.

Q. What time of the year was most of the stuff sent to foreign points?

A. Our export business usually lasted about a month; that is, our biggest season in export business, and that was in July.

Q. What means of transportation were used?

A. For export?

Q. For export.

A. Trucks at first.

Q. And will you describe the process by which these goods were started from the warehouse until they reached the final method of transportation?

A. They were loaded by trucks at our warehouse.

(Testimony of Ernie Reich.)

Q. By whom?

A. Our warehouse,—that is, by our warehousemen and shipped to the different terminals here in Oakland and San Francisco.

Q. Which terminals specifically?

A. Encinal and Howard Terminal, Port of Oakland, Ninth Avenue, McCormick Steamship Company.

Q. What happened after they reached the terminals?

A. They were stored there until sailing dates for certain vessels, they were assigned to.

Q. Do you know normally how long they were stored at these [188] terminals?

A. Not over three or four days.

Q. And then loaded directly from those terminals into the vessels?

A. Into the vessels, yes.

Q. About how much of your entire pack was shipped by water, in the manner you have indicated, during the year?

A. I would say 90 per cent.

Q. And of that, what percent was sent to foreign ports?

A. About seven or eight per cent.

Q. What is that?

A. Seven or eight per cent.

Q. Seven or eight per cent to foreign ports, and the remainder to where?

A. To eastern ports.

Q. On the Atlantic seaboard?

(Testimony of Ernie Reich.)

A. Yes.

Q. How about the Gulf?

A. Yes.

Q. Which Gulf ports, if you know of any?

A. I don't know any of them.

Q. Did the point of shipment, rather, the point to which the product was shipped always appear on the cases?

A. Yes.

Q. During the month of July 1935 what were your hours? [189]

A. I had all hours; usually worked eight hours at the least, and worked up to as much as 17 and 18 hours a day.

Q. Did you join the union?

A. I did.

Q. Why did you join?

A. To better my conditions.

Q. What—who first spoke to you about the union?

A. Mr. Anger.

Q. Do you remember when that was?

A. Along in July, sometime about the 15th of of July.

Q. Wasn't it rather unusual for an assistant foreman to join the union?

A. I don't know why it should be.

Q. When did you first receive your union button?

A. August 5.

Q. Was that on Monday?

(Testimony of Ernie Reich.)

A. Monday.

Q. What time did you go to work on Monday?

A. 7 o'clock.

Q. Did you speak to Mr. Anger that day?

A. I believe I did.

Q. Did you receive your button from him?

A. Yes.

Q. Anything particularly happen that day with reference to the union? [190]

A. We had a meeting by our employer about 6:30 in the evening.

Q. Who called that?

A. Mr. Huddleson.

Q. Who is he?

A. He is the general manager of the Santa Cruz Fruit Packing Company.

Q. How did you learn about the meeting?

A. We went out for supper and came back at 6:15 and Mr. Huddleson was out there and wanted all the boys to come together, and he wanted to talk to us.

Q. Do you know whether he called the Stokely men as well as the Santa Cruz men together?

A. Yes.

Q. Where was this meeting held?

A. In our warehouse.

Q. Santa Cruz?

A. Santa Cruz.

Q. At what time?

A. 6:30.

(Testimony of Ernie Reich.)

Q. What was the purpose of the meeting?

A. Mr. Huddleson heard that we had joined the union and——

Q. (Interrupting) Just a minute! Perhaps you had better tell us what was said and done at the meeting.

A. He came out and said that he heard that we had joined [191] the union.

Q. Now just a moment. Do you remember how many men were present?

A. About 35 or 40 men.

Q. And were all of these men wearing their union buttons?

A. No, they weren't.

Q. About how many of them were?

A. I think, I would say about half of them.

Q. Now go ahead and tell us what was said and done.

A. He said that he heard we had joined the union and wanted to know what we meant by it. He said if it was more money that we were looking for, why didn't we form our own body of men and come and see him personally instead of joining the union. And he said that he had known this for two weeks previous; that he wasn't sleeping either; that he went right out and got himself a contractor to do the work for, he said, 2/10th per cent less than we were doing it, so he didn't see any reason why he shouldn't give it to him.

Q. Did he say anything about——

(Testimony of Ernie Reich.)

Mr. St. Sure: (Interrupting) Can't you ask your questions without leading.

Q. (By Mr. Edises) Go ahead and relate the balance of the conversion.

A. He opposed us belonging to a union, because he said that he didn't want to take orders from any outsider and to [192] tell him how to run his business. He was opposed to our 62½ cents an hour that he heard we were asking for. He said he didn't want to be made the goat. He said that if we went out and organized the other 57 canneries in the State of California, he would be glad to pay $1 an hour, and that he wouldn't give a damn. That was about all that was said.

Q. Did any of the men say anything?

A. One of the fellows asked him why he didn't start paying 62½ cents an hour, and that the rest of the canners would all follow suit.

He answered by saying he wasn't going to be made the goat.

Q. Well, did he leave you with any kind of a proposition, or tell you anything about what he intended to do, or what you could do?

A. He told us he would give us a couple of days to think it over.

Q. Think what over?

A. Whether we wanted to work the same conditions, under the same conditions, and forget our union activities.

Q. Anything further said at that conversation as far as you can now recall?

(Testimony of Ernie Reich.)

A. That is all I can recall at this time.

Q. Did Mr. Huddleson use any strong language at that time? [193]

A. Well, yes.

Q. Well, what was it? Don't be afraid to say whatever he said.

A. I don't just remember—about what the hell it was—it was plenty strong at times.

Q. What did all the men do then after the meeting?

A. We resumed our work.

Q. Resumed your work?

A. Yes.

Q. Do you know Mr. Gomez?

A. I know him by sight, yes.

Q. Did you see him around the Santa Cruz plant on Monday?

A. No.

Q. What time did you go to work on Tuesday?

A. 7 o'clock.

Q. Did anything happen on that day with particular reference to the union or its activities?

A. No, nothing that I know of.

Q. Did you see Mr. Gomez around on Tuesday?

A. I didn't see him at that time.

Q. What time did you go to work on Wednesday?

A. I didn't go to work on Wednesday.

Q. You didn't go to work on Wednesday?

A. No.

Q. How did that happen? [194]

(Testimony of Ernie Reich.)

A. I started at 7 o'clock on Tuesday morning and worked until about 3 o'clock, coming home and I got a couple of hours of sleep and then went back to work at 6 o'clock and worked all night until 7 o'clock in the morning.

Q. Did you know there was to be an initiation meeting of the union Wednesday night?

A. I did.

Q. How did you learn that?

A. From one of our warehousemen.

Q. Do you remember who it was?

A. Mr. Reckling.

Q. Where were you when he told you about it?

A. I was at home.

Q. What did he tell you?

A. He told me we were going to have a meeting on Wednesday night, that night.

Q. What else?

A. That is all.

Q. Well, did he say what time the meeting was to be held?

A. He said 8 o'clock.

Q. Weren't you aware that the men customarily worked until at least that late, and usually later?

A. I was. I asked him how come he came home at 4:30. He said that they got permission to leave at 4:30.

Q. Did he say who got permission? [195]

A. He said Anger had got permission; that he inquired about it and that Mr. Anger told Reckling that.

(Testimony of Ernie Reich.)

Q. Did you go to the meeting?

A. I did.

Q. Did you speak to Mr. Anger at the meeting?

A. Yes.

Q. Did Mr. Anger tell you anything about how leave was gotten to attend this meeting?

A. No, he didn't.

Q. He didn't speak about it at the time?

A. No.

Q. Did you show up for work the next morning?

A. I did.

Q. What did you find?

A. I found the doors all locked.

Q. Did you try to get in?

A. No.

Q. Why not?

A. The doors were all locked and had watchmen around there, and I asked the watchman why we couldn't go in, and he said the old man said to keep us all out, to keep the doors locked.

Q. Do you know who he was referring to when he spoke of the "old man"?

A. He meant Mr. Huddleson, because he is the fellow he [196] takes orders from.

Q. What did you do then?

A. Just stood around.

Q. When was the picket line formed?

A. About 10 o'clock that day, Thursday.

Q. Did you serve on the picket line?

A. I did.

(Testimony of Ernie Reich.)

Q. Did you have any conversations with any official of the company shortly after the lockout?

A. I had one with Mr. Huddleson about three or four days after the lockout.

Q. What time of day was that?

A. It was about 9 o'clock in the morning, around that time.

Q. And where did this conversation take place?

A. Out on 14th Street and 57th Avenue.

Q. Anybody else present?

A. Quite a few fellows were around there; Mr. Phillips, for one.

Q. Is he one of the complainants in this case?

A. Yes.

Q. Anybody else that you can think of?

A. No, not that I know of right now.

Q. What was the subject of his conversation?

[197]

A. Why I heard from some one, I don't remember who it was, that Mr. Huddleson told him that we could go back to work if we wanted to, he came up close to me and I jumped him about the question.

Q. What do you mean? Did you jump on him physically?

A. No; he was too big for me. So I asked him why he wanted us to go back to work when he locked us out. I said, "It was a dirty trick to play on us."

(Testimony of Ernie Reich.)

He said, "Who the hell told you we locked you out?"

The watchman was there close and I said, "There is the man that told us," and I called him over and he verified my statement.

Q. What do you mean, he verified the statement?

A. He said that was what he told us, we were locked out on that Thursday morning. So that is all that was said there. He walked off and didn't answer.

Q. Did Mr. Huddleson either affirm or deny having given these instructions to the watchman?

A. No, only that he said, "Who the hell told you you were locked out?"

Q. That was to you?

A. That was to me.

Q. Do you remember who that watchman was?

A. Gene Richie.

Q. Did you have any further conversations with any company [198] official?

A. No.

Q. When did you first see Mr. Gomez around the Santa Cruz plant?

A. Wednesday, about a quarter of five.

Q. What were you doing there at the time?

A. I was supposed to go back to work at 6 o'clock that night.

Q. And where did you see Mr. Gomez?

A. In the warehouse.

Q. What was he doing?

(Testimony of Ernie Reich.)

A. He was in the office at the time that I saw him, and about five minutes later I saw him go out and get about six or seven Chinamen and negroes and put them to work.

Q. Where did het get them from? I mean where did he go out and get them?

A. At the door we usually entered.

Q. And this was about 5:20, you say?

A. Around that time, yes.

Q. Did you see him do anything else?

A. No.

Q. You didn't have any conversation with him, did you?

A. No.

Q. You say that you showed up around 6 o'clock to go to work? [199]

A. I showed up about a quarter of five to go to work.

Q. Intending to go to work at six?

A. Yes.

Q. Did you go to work?

A. No.

Q. Why didn't you?

A. Mr. Torenson asked me if I was going to the meeting and I said, "Yes." He said, "The old man gave us orders not to let anybody go to work that is going to the meeting."

Q. What time was that?

A. 5:15.

Q. Did you say anything to Mr. Torenson? Did you ask him anything about what you had heard—

(Testimony of Ernie Reich.)

who was the man that told you about the meeting, Reckling? Did you say anything to Mr. Torenson about that?

A. No.

Q. Did you see any Santa Cruz cars held up on any of the wharves after the picket line was established?

A. I did.

Q. Where did you see it?

A. Encinal Terminal, Howard Terminal.

Q. About what quantity?

A. At Encinal Terminal I saw about 6,000 cases held up.

Q. Do you know how long it was detained?

A. Until Judge Sloss made his decision, and then it was [200] released.

Q. About how long a period of time was that?

A. Two or three weeks.

Q. Do you know where any of that cargo was headed for?

A. Most of it was headed for Boston.

Q. Do you remember the name of the firm?

A. First National Stores, for one.

Q. Do you know whether it was the practice at the plant to interchange the Stokely and Santa Cruz warehousemen?

A. Yes.

Q. Did you ever see it done?

A. I have.

Q. How often did it happen?

(Testimony of Ernie Reich.)

A. Almost every day.

Q. Well, how was it arranged?

A. If Stokely happened to be busy for one day, why we would give him some of our men, and if we got busy, why we borrowed some of their men—always changed that way.

Q. Was that a part of your function as assistant foreman, to arrange for those transfers?

A. Yes, I did.

Q. Do you know whether the Santa Cruz and Stokely warehousemen received the same pay check, the same type of pay check?

A. They did. [201]

Q. Both Santa Cruz checks?

A. They received Haslett Warehouse checks.

Q. By whom were they signed?

A. That I don't know.

Q. You state that both the Santa Cruz and the Stokely men received Haslett Warehouse checks?

A. Yes.

Q. I thought they were working for Santa Cruz. How do you explain that?

A. They are bonded agents for the Santa Cruz Fruit Packing Company.

Q. You say that the men received those Haslett checks?

A. The foremen did; the two foremen.

Q. Do you know whether the men did?

A. No.

Q. What checks did the men receive?

(Testimony of Ernie Reich.)

A. Both Santa Cruz Fruit Packing Company checks.

Q. Who did you take your orders from?

A. Mr. Torenson.

Q. Did you ever take orders from Mr. Huddleson?

A. Once in a while.

Q. He was your superior, was he not?

A. Yes.

Q. Did you ever offer any violence of any kind to any truck driver, or any employe of the Santa Cruz of Stokely [202] after the lockout?

A. I did not.

Q. Did you ever receive any instructions from the union in regard to any violence of any kind, or direct action against any Santa Cruz or Stokely employe, or truck driver, or any one slse?

A. No, other than peaceful picketing.

Q. And did you ever hear any one threatened with any violent consequences if they refused to do anything you told them?

A. I didn't.

Q. Will you take your job back if it is offered to you?

A. I would.

Q. Do you know whether the Santa Cruz or Stokely cargo is still hot?

A. No, not as far as the handling is concerned.

Q. Did you know what demands were contained in the agreement that the union was to submit to Mr. Huddleson?

(Testimony of Ernie Reich.)

A. I did some of them, yes.

Q. And as far as you were aware what were those demands?

A. Eight hour days, 62½ cents an hour.

Q. Were those the matters that the men were chiefly concerned with?

A. Yes.

Q. Do you know whether Mr. Woods, as business representative, [203] had authority to present this proposed agreement?

A. He did.

Q. And to carry on negotiations with the company?

A. Yes.

Q. And to arrive at an agreement?

A. Yes.

Q. Would that agreement be subject to the men voting on it as to whether it was satisfactory?

A. Yes.

Q. How many men were employed in the Santa Cruz warehouse?

A. 25 or 30 men.

Q. How many in the Stokely warehouse?

A. About eight or ten men.

Q. Who was their foreman?

A. Mr. Morris.

Mr. Edises: No further questions. [204]

Cross Examination

Q. (By Mr. St. Sure) In your work there, did you ever see any bills of lading covering the shipments of any of the Santa Cruz merchandise?

(Testimony of Ernie Reich.)

A. I did.

Q. You know, as a matter of fact, don't you, that all shipments to points in other states—in states other than California—were shipped FOB Oakland, or FOB the plant due the purchaser?

A. Yes.

Q. Pardon me?

A. Yes.

Q. And in regard to the foreign shipments—Did you ever see the bill of lading on any of the foreign shipments?

A. No.

Q. Your estimate of the amount of the shipments to foreign ports was seven to eight per cent?

A. Yes.

Q. I wasn't quite clear on that. You said that six per cent you thought was shipped by water, and seven or eight per cent to foreign ports—by that did you mean seven or eight per cent of the six, or of the total?

A. Six or seven per cent of the domestic shipments, seven per cent on top of that, as all going by water to foreign ports. [205]

Q. Your estimate is seven per cent of the total pack went to foreign ports?

A. Yes.

Q. You say you saw the bills of lading on some of these shipments. In what connection was that in? In connection with what part of your work?

(Testimony of Ernie Reich.)

You didn't have the handling of those bills of lading?

A. Why, no.

Q. You don't know whether or not the purchaser of those products designated how they were to be shipped?

A. The only way I knew that, I handled part of the orders that came out of our main office.

Q. You did know the purchaser did designate how they were to go by?

A. The purchaser didn't designate that—the shipper.

Q. By that—What do you mean, the shipper?

A. The Santa Cruz Fruit Packing Company.

Q. Where did you get that information?

A. I know.

Q. How do you know?

A. I know the traffic manager.

Q. Who is the traffic manager?

A. Mr. Gaddis.

Q. He designates what ship merchandise shall go on—to—say, to Boston? [206]

A. He does as far as I know.

Q. Is that your understanding of it?

A. Yes.

Q. When did you first meet Mr. Woods?

A. On the evening of August 7—on Wednesday.

Q. That was the night of the meeting?

A. Yes, sir.

Q. And that was the night you were initiated into the union?

(Testimony of Ernie Reich.)

A. Yes, sir.

Q. And all the other men were initiated on that same evening?

A. Almost all of them, yes.

Q. Now, there had been an agreement mailed to Mr. Huddleson, had there?

A. There had been, but I don't know when it was mailed.

Q. Do you know whether it was mailed before or after this meeting on Wednesday evening?

A. I believe it was mailed before Wednesday evening.

Q. Up to that time you hadn't met Mr. Woods?

A. No.

Q. How did Mr. Woods obtain the authority from you, or so far as you were concerned, to represent you before Wednesday evening?

A. That, I don't know. Unless we paid our initiation fees and were considered a member of the local [207]

Q. Had you up to the time—Wednesday evening—ever seen any form of proposed agreement, or discussed it with Mr. Woods?

A. No, sir.

Q. Did you see it after or at that meeting?

A. I just heard about it, that is all.

Q. What did you hear about the proposed agreements?

A. Our wage scale—warehousemen's wage scale—eight hours a day, and our overtime——

(Testimony of Ernie Reich.)

Q. (Interrupting) Was that the first time you knew what this proposed agreement contained, the evening that this meeting was held—on Wednesday evening?

A. No, the boys talked it over before—two or three weeks before.

Q. Did you know anything concerning any provision in the proposed agreement as to the closed shop?

A. No, I don't remember.

Q. Did you know that any request or demand was to be made requiring that all persons working in the warehouse belong to this particular union?

A. I don't know.

Q. Pardon me?

A. I don't know.

Q. You don't know about that?

A. No. [208]

Q. Now, on Monday you say Mr. Huddleson—that is, the Monday before this Wednesday meeting was held—Mr. Huddleson came out into the warehouse and asked the men to be brought in there; and he talked with them. Was Mr. Torenson there at the time?

A. He was.

Q. Anybody else there that was a foreman or assistant foreman, except yourself and Mr. Torenson?

A. Mr. Morrison, he was the man from the Stokley Warehouse.

Q. Anyone else?

A. Our shipping clerk, Mr. Wagner.

(Testimony of Ernie Reich.)

Q. He was there?

A. Yes.

Q. Any others that you recall?

A. No, that was all the foremen; I believe the rest were all warehouse members.

Q. Well now you say that Mr. Huddleson opened the meeting by saying he had heard that you had joined the union, and wanted to know what was meant by it, is that correct?

A. Yes.

Q. Who answered him, if anyone did?

A. No one answered him.

Q. Anybody speak up at all?

A. Later on in the conversation, yes.

Q. But, I mean when he asked the question, "What do you [209] mean by it?" nobody spoke up at that time?

A. No.

Q. As you related the conversation he said "Why didn't you come to me? If it is a matter of more money, why don't you come and talk it over yourselves?" Anybody answer that question?

A. No.

Q. Then, he said something about "he hadn't been sleeping." He had a contractor who could do it for less. He didn't see why he couldn't give it to the contractor. He said something about that, is that correct?

A. No.

Q. Anynody say anything at that time?

A. No.

(Testimony of Ernie Reich.)

Q. Mr. Huddleson also said—you say Mr. Huddleson didn't want to be in the position of taking orders from outsiders. He was going to run his own business?

A. Yes.

Q. He was opposed to paying 62½ cents per hour, because he didn't want to be made the goat. If you wanted to go out and organize the canners he would be glad to pay $1.00 an hour?

A. Yes.

Q. Anybody have anything to say then?

A. Mr. Resburg spoke up. He said, "Why don't you start [210] off and pay 62½ cents an hour, and the rest of them would all follow suit?"

Q. Mr. Huddleson said then, he didn't want to be picked. If they all did it he would, but he didn't want to be made the goat, was that his reply to that?

A. Yes, that is right.

Q. Then, you say, he said "to think it over a couple of days," and that was about the end of the meeting?

A. Yes.

Q. Did anybody ask any questions or make any statements at all, except this one man who said, "Why don't you start it; the others would follow suit"; was anything else said by the employees there?

A. Not that I know of.

Q. Not that you recall?

A. No.

(Testimony of Ernie Reich.)

Trial Examiner Traynor: We may have a recess for five minutes.

Mr. St. Sure: Thank you.

(At this point a recess was taken after which proceedings were resumed as follows.)

Q. (By Mr. St. Sure) Mr. Reich, on this Wednesday, you say you left the plant about 3 o'clock, and then came back about a quarter past five?

A. No, I didn't say that. [211]

Q. Pardon me, I wasn't quite clear on that. What was the situation?

A. No, I left the plant about 7 o'clock Wednesday morning, and got through work at seven, coming back about a quarter after five—back to work at six o'clock.

Q. I see. In the meantime, between the time that you had this meeting with Mr. Huddleson on Monday evening, and the time that this union meeting was held on Wednesday evening, did the men have any discussion as to what they would do in view of Mr. Huddleson's declaration that they get together and discuss what you were going to do, and take it up with him, notify him that you were going to go ahead upon this proposed contract, whether you would or would not take it up with him any further?

A. We did not.

Q. Following the meeting of Monday night with Mr. Huddleson, the next move was simply the

(Testimony of Ernie Reich.)

meeting, the union meeting, so far as the men were concerned?

A. Yes.

Q. There was no attempt in the meantime to talk with Mr. Huddleson, or tell him what you had decided to do, except you notified him—Mr. Torenson—that you were going to the union meeting that night?

A. Yes.

Q. Anyone suggest at all that you should take up with [212] Mr. Huddleson your determination to go ahead with the agreement or proposed agreements?

A. I believe that was taken up with our business agent, Mr. Woods.

Q. Do you know that it was?

A. I don't know for a fact.

Q. Do you know whether Mr. Woods saw Mr. Huddleson in the meantime?

A. I don't know.

Q. Now, when you came back Wednesday afternoon to the plant about 5:15, you say you had anticipated going back to work at six?

A. Yes, sir.

Q. And normally, you would have worked on that shift from six until what time?

A. Some time the next morning.

Q. And on this particular evening, did you intend to work your full shift, or did you intend to leave some time in the evening to go to this union meeting?

(Testimony of Ernie Reich.)

A. I was figuring on going to the union meeting.

Q. And you say when you got there that Mr. Torenson said to you—well, I don't seem to have a memorandum of what that statement was, but something was said that the men would—that the men who were going to the meeting shouldn't go to work, or something of that kind? [213]

A. Yes.

Q. Just what words were used by Mr. Torenson, such as you can recall them?

A. He said Mr. Huddleson told him "Anyone who attended that meeting needn't report to work after the meeting."

Q. Did Mr. Torenson say that if the men didn't want to work their full shift they needn't come back to work?

Mr. Edises: Will you specify what conversation?

Mr. St. Sure: The same conversation when he came there at 5:15, and expected to go to work.

The Witness: What was the question?

Q. (By Mr. St. Sure) Didn't Mr. Torenson say, in effect, to you that the instructions he had, were unless the men wanted to go to work and work their full shift that night, they just needn't go to work at all?

A. Well, he said that and he said the other too. He said that if the boys didn't want to work their whole shift, why they needn't report back to work after the meeting.

Q. In other words, unless they wanted to work their full shift through, they needn't bother coming

(Testimony of Ernie Reich.)

back after the meeting. That was the subject of the conversation you had with Mr. Torenson?

A. That's right.

Q. Knowing that, having been told that by Mr. Torenson, you went to the meeting? [214]

A. I did.

Q. Well, did you think Mr. Torenson was fooling when he said that his instructions were from his superior, Mr. Huddleson, or your superior, that if you didn't work the full shift, you needn't come back?

A. There wasn't much choice about going to work. Gomez was in there, and there wasn't much choice. What the hell choice would I have? Not a bit.

Q. Anyway, you didn't say, "Well, I won't go there to the meeting; I will go to work and work my shift?"

A. I was willing to go to work at six o'clock, and up until the time of the meeting. I usually got off when I wanted to.

Q. When Mr. Torenson said "If the men don't want to work their full shift," you didn't say "That's all right; I will not go to the meeting. I'll work full through"?

A. No, I didn't say that.

Q. Pardon me?

A. No, I didn't say that.

Q. Did you come back after the meeting?

A. I did not.

Q. Why not?

(Testimony of Ernie Reich.)

A. I didn't see any use in coming back.

Q. Why did you come back the next morning?

A. I did come back the next morning. [215]

Q. What had changed your mind over night? You thought there was no use coming back that night? Why did you come the next morning?

A. I didn't walk off no job.

Q. Pardon me?

A. I didn't walk off the job.

Q. You say you didn't think there was any use in coming back after the meeting. Is that correct?

A. Yes, sir.

Q. Didn't that same reasoning apply the next morning?

A. I don't know whether it did not not.

Q. When you arrived the next morning, you say the watchman told you, "The old man said to keep you all out," or something of that kind?

A. Yes, sir.

Q. And then, that morning, beginning about ten o'clock, that would be Thursday morning, the picket line was formed, is that correct?

A. Yes.

Q. By the way, on this evening before the meeting—Wednesday evening meeting—was there anybody else there when Mr. Torenson had the conversation with you about either working the full shift or not bothering to come back?

A. I don't remember.

Q. Any of the other men around there that you recall? [216]

(Testimony of Ernie Reich.)

A. Some of the boys were there, yes.

Q. Did any of them go to work and work through their shift?

A. I don't know.

Q. They all did show up at the meeting, as far as you know?

A. Some of them didn't.

Q. Some of them did?

A. Some of them didn't.

Q. Some of them did not?

A. Yes.

Q. Who didn't come to the meeting?

A. I don't know that.

Q. While you were on the picket duty, what were your particular duties as a picket?

A. Stop trucks, that was about all.

Q. Yes. What did you stop trucks for? What was your purpose in that?

A. Well, the union men usually stick together that way. If they know there is a picket line there, they won't go through. If you inform them, they won't go into the place.

Q. Did you stop any men who were not union men?

A. Not that I know of; usually all union drivers in the bay district.

Q. Did you see any farmers coming in with loads of fruit or vegetables that were stopped? [217]

A. I did not.

Q. Did you at any time after Thursday ask Mr. Huddleson or anyone else, whether or not you could return to work?

(Testimony of Ernie Reich.)

A. I didn't ask them—no.

Q. Now, you say that you saw some Chinamen that Mr. Gomez was taking into the warehouse.

A. I did.

Q. How many Chinamen did you see?

A. There was about seven men went in there, and I don't know what they were—Chinamen, one negro—I don't know what the rest of them were.

Q. How many Chinamen did you see?

A. I don't remember how many Chinamen.

Q. Pardon me?

A. I don't remember how many Chinamen were there—I don't remember how many Chinamen were in the bunch.

Q. You remember seeing one negro?

A. I do.

Q. Did you see more than one Chinaman?

A. Yes.

Q. How many would you say?

A. I would say there was more than one.

Q. You were on picket duty there, for how long a time after that, how long a period of time did you remain there as a picket? [218]

A. About two months.

Q. Did you see the warehouse crew coming and going during that time at all?

A. I did, once in a while.

Q. Did you see any Chinamen in the crew after that?

A. I did.

Q. How many?

(Testimony of Ernie Reich.)

A. Two or three of them.

Q. Two or three?

A. Yes.

Q. When the warehouse crew, following this Thursday, left the plant or went into it, was anything said or done to them by any of the men in the picket line, that you noticed?

A. No.

Q. Pardon?

A. No.

Q. Not a word spoken that you knew?

A. I heard a lot of words spoken, but I didn't remember what they were about.

Q. On this Wednesday evening before the meeting, you say you arrived there about 5:15. How long did you remain there that evening?

A. I wouldn't say over 25 minutes all together—20 or 25 minutes.

Q. When you left, were any of the other men there of the [219] night crew that were going on, or to go on, around six o'clock?

A. There were several of them, yes.

Q. Did they leave also when you left?

A. They didn't leave with me. I left alone.

Q. Who were the men who were there, can you remember?

A. Dick Ferriera, for one.

Q. Do you remember the names of any of the others who were there?

A. Henry Cincione.

Q. Do you remember any of the others who were there?

(Testimony of Ernie Reich.)

A. That is all I remember.

Q. Did you discuss with them the things that Mr. Torenson said to you?

A. I did not.

Q. Did you talk with them?

A. I don't know.

Q. Did you see them at the meeting afterwards?

A. I don't remember that.

Q. When Mr. Torenson said to you that his instructions were either that the men would work their full shift, or they needn't bother coming back after the meeting, did you say anything to him at that ime?

A. I didn't say anything.

Q. Pardon me? [220]

A. I didn't say anything.

Q. Didn't you say anything more at all?

A. He said "How do things look?" I said "O.K." and I walked off.

Mr. St. Sure: That is all.

Redirect Examination

Q. (By Mr. Edises) When you showed up at the warehouse on Wednesday around 5:15, were the day men present?

A. No.

Q. And ordinarily they would have been present, would they not?

A. Sometimes, yes.

Q. What did you understand that to mean?

A. Well, I had Mr. Reckling tell me when I left home that they had instructions they could

(Testimony of Ernie Reich.)

knock off at 4:30, and that they were going to the meeting that night.

Q. You say had instructions they could knock off, referring to Mr. Torenson's permission?

A. Yes.

Q. You are referring to Mr. Torenson's permission?

A. Yes.

Q. You knew that the men were going to the meeting, did you not?

A. I did, yes.

Q. And you saw Mr. Gomez present with about how many men? [221]

A. Seven or eight men.

Q. Did you know what Gomez was doing there?

A. It looked to me like he was hiring boys to go to work.

Q. What was that last?

A. He looked to me as if he was hiring boys to go to work. He did take them and put them to work on the labeling machines.

Q. What boys are you referring to?

A. Chinamen and negroes.

Q. Did it occur to you to go up to Mr. Gomez and ask him for a job——

A. I did not.

Q. Why not?

A. I didn't like his looks.

Q. Well, you had a pretty good idea, didn't you, about what Mr. Gomez was doing there?

A. I did, yes.

(Testimony of Ernie Reich.)

Q. What was your idea of what he was doing?

A. I figured he just come in there and took our jobs.

Q. Were these Chinamen and negroes union men?

A. No.

Q. What were they?

A. Scabs, I guess.

Q. As a union man, do you think that in the absence of specific instructions from your union, it is customary to [222] work with scabs?

A. It is not.

Q. Did that have anything to do with your failure to ask for a job with Gomez?

A. You wouldn't catch me working with a bunch of Chinamen, whether I belonged to any union or not.

Q. About how long did Mr. Huddleson talk when he spoke to the men on Monday?

A. I should say about 20 or 25 minutes.

Q. Have you related every word that he said at that meeting?

A. I wouldn't say that I did.

Q. You have given merely the substance of what he said, is that right?

A. Right.

Q. Did he say a great deal more along the same lines you have indicated?

A. Yes.

Q. Do you recall anything further that was said by Mr. Huddleson? Is your recollection stimulated

(Testimony of Ernie Reich.)

as to what took place at that meeting? I would like to get the specific language, if you know it.

A. The one thing he did say was, before he would have a union in his place, he would be carried out in a wooden kimono, or words to that effect. [223]

Q. Did he say anything else?

A. That is all I can remember.

Q. Did you know at that time—at the time you joined the Warehousemen's Union, the union had contracts—working agreements—with other warehouses?

A. No, I didn't at that time—no.

Q. When did you first learn that?

A. After I had been in the union for several days.

Q. You knew it prior to the lockout however, didn't you, or did you?

A. Prior to the lockout?

Q. Yes.

A. That they had agreements with Santa Cruz, or others?

Q. No, with other warehouses.

A. I didn't know it.

Q. How about the Terminal operators?

A. I didn't know about that either.

Q. Had you ever belonged to a union before?

A. No.

Q. Were you—Did you have any knowledge of union procedure and activities?

A. No.

(Testimony of Ernie Reich.)

Q. I believe you were asked the question by Mr. St. Sure as to whether or not you had any conversation with Mr. Huddleson after the lockout on Thursday, and your reply, I [224] believe was "No." You meant other than the conversation you testified to on direct, did you not?

A. Yes.

Q. You testified that you didn't meet Mr. Woods until the union meeting, the initiation meeting, on Wednesday night. Did you know that Mr. Woods was the business agent of the union?

A. I did.

Q. Who told you?

A. Mr. Anger.

Q. Did you know what his duties were as business agent?

A. I did.

Mr. Edises: That is all.

Mr. St. Sure: No questions.

Trial Examiner Traynor: That is all. You had no further questions, Mr. St. Sure?

Mr. St. Sure: No.

(Witness excused.)

Mr. Edises: Mr. Pepitone.

JOE PEPITONE,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Pepitone—Joe Pepitone.

Q. Where do you live? [225]

A. What is that?

Q. Where do you live?

A. Twenty-seventh Avenue.

Q. What number?

A. 1121.

Q. Are you married?

A. Yes.

Q. Any children?

A. Six—some of them married.

Q. Did you join the union, Mr. Pepitone?

A. No, I never did join it before.

Q. You joined since the lock-out?

A. Yes.

Q. What was your job at the Santa Cruz?

A. Janitor—going around and cleaning the warehouse.

Q. Do you remember working on Wednesday, October 7th—August 7th?

A. Yes.

Q. Do you remember hearing a conversation on Wednesday morning, August 7th, between Mr. Anger and Mr. Torenson?

A. Yes.

(Testimony of Joe Pepitone.)

Q. Was anybody else there? Was Mr. Huddleson there?

A. Mr. Hughes.

Q. Did he work on the printing machines?

A. Yes, printing machines. [226]

Q. What did you hear them say?

A. I heard Bob ask him——

Q. (Interrupting) Bob is Mr. Anger?

A. Yes. They wanted to go home at 4:30. He said "All right."

Q. Who said "All right?"

A. Mr. Torenson.

Q. That was about all that was said?

A. Yes.

Q. Do you remember hearing anything else?

A. No.

Q. Did you hear Mr. Anger speak to Mr. Torenson again during that day?

A. No, in the afternoon I never seen him talk to him no more.

Cross Examination

Q. (By Mr. St. Sure) Are you one of the complainants in this proceeding?

(No answer.)

Q. When did you join the union?

A. Seventh of August.

Mr. St. Sure: I withdraw the first question. I see that he is one of the complainants.

To straighten out the record, apparently this gentleman applied when the others did, and was init-

(Testimony of Joe Pepitone.)

iated at the same [227] time as the others. I thought he joined subsequently.

No questions.

Mr. Edises: That is all, Mr. Pepitone.

(Witness excused.)

Mr. Edises: Mr. Doyle.

LARRY DOYLE,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Larry Doyle.

Q. Where do you live?

A. 1406 Filbert street.

Q. Oakland?

A. Yes.

Q. Are you married?

A. Yes, sir.

Q. Any children?

A. No, sir.

Q. Stokley or Santa Cruz?

A. Santa Cruz.

Q. What was your job at Santa Cruz?

A. Everything in general — general warehouse work.

Q. Did you do loading of the cases into the box cars and trucks?

(Testimony of Larry Doyle.)

A. No. [228]

Q. What was that?

A. No.

Q. Did you do everything except that?

A. Yes, sir.

Q. Who is your boss?

A. Ernie Reich and Bob Anger.

Q. Are you on the day shift or night shift?

A. Night shift.

Q. During the first part of August?

A. Night shift.

Q. What time did you go to work on the evening of Tuesday, October 6th—August 6th?

A. I went to work at 6 o'clock.

Q. What was that?

A. Six o'clock.

Q. What time did you knock off?

A. I knocked off about 9:30 Wednesday—9:30 or 10:00.

Q. Did you speak to Bob Anger about the time you knocked off?

A. Yes, a little bit before. We were cleaning up.

Q. What was the subject of that conversation?

A. He come around; he told me they were going to go to a meeting that night. He asked Stan Torenson. He said it was all right for us to go.

Q. Did he tell you where the meeting was to be held?

A. Yes. [229]

Q. Was anything further said at that time?

(Testimony of Larry Doyle.)

A. No.

Q. Did you speak to Mr. Torensen that morning before you left the plant?

A. Yes.

Q. About what time was that?

A. About 9:30, when I was going out.

Q. Anybody else present at that time?

A. Yes, Al Pio, and—I don't recall all their names.

Q. Were these persons present when Mr. Anger spoke to you?

A. Yes, they work on the machines.

Q. Were they also night shift men?

A. Yes.

Q. What was said?

A. "Which one of you boys are going to the meeting?"

We said "We were."

He said "I will have men to take your places while you are gone." He said to come back after the meeting was over—"You can go to work."

Q. Did he say who he would have to take your places?

A. Yes, he said he would get extra helpers on the can stack.

Q. He told you to "come back and go to work after the meeting"?

A. Yes, sir.

Q. Then he said about what time you would be back after the [230] meeting? How long the meeting was expected to last?

(Testimony of Larry Doyle.)

A. He asked us how long we thought we would be gone. We said back at ten o'clock.

Q. Anything further said at that time?

A. That is all.

Q. Did you go to the meeting that night?

A. Yes.

Q. What time was the meeting over?

A. A quarter to ten.

Q. What did you do then?

A. We got on the car and went back to the cannery.

Q. Who do you mean by "we"?

A. Anger, Sannebeck and myself.

Q. What did you do then?

A. We went back to the cannery. It was about ten o'clock when we got there. We went down to the cannery; just before we got there two men were standing back in a machine. They ran out in a machine to stop us. We didn't pay any attention to them; we drove up to the warehouse door.

It was closed but the shipping light was on overhead. We knocked on the door; nobody answered. We knocked again. Pretty soon the doors opened by this—that contractor, Gomez.

He asked us what we wanted.

Q. How did you know it was Gomez? [231]

A. I didn't know; I just knew, as soon as I seen him.

Q. Did anyone afterwards point him out to you?

(Testimony of Larry Doyle.)

A. Yes.

Q. He was the man who was pointed out to you?

A. Yes.

Q. All right. Go ahead.

A. He said "What do you want?"

We said "We want to see Stan."

He said "Stan isn't here."

Just then Stan Torenson stuck his head out of the door. "I told some of the boys if you went to that meeting you needn't come back."

We said "You told us this morning to come back."

He said "I can't help it; that is orders."

We turned around and I said "Is that all?"

He said "That is all."

We got in the car and went.

Q. Were there any men around at the time of this conversation?

A. These two fellows were waiting. They walked down to us as soon as we stopped the car. They came up—Ernest Arano, the extra watchman, and Jack—I don't know what his last name is. He is a kind of a watchman too.

They came up there; they stood right behind us. Jack had his hand in his pocket; the other guy had a gun—I [232] don't know, a sawed-off shotgun, tear gas gun. He was standing there, had a rifle stock on it—a barrel like that.

When we finished they walked back to the car. We wanted to get out there before they got funny.

(Testimony of Larry Doyle.)

Q. Did you understand that you weren't wanted? More than that?

A. They walked right back with us, so we beat it.

Q. What did you do then?

A. We went home to bed.

Q. Did you come down to the plant the following morning?

A. No, sir.

Q. When was the next time that you came to the plant?

A. That afternoon.

Q. What did you do then?

A. I came down there. I saw all the boys out in front. I started talking to them.

I asked them if they got the same thing I got.

They said "Yes."

Q. What did you mean by "got the same thing I got"?

A. They wouldn't let them go in. They said they couldn't get in; all the doors were locked.

Q. What else? Anything particularly done there then this afternoon?

A. No, I went back to the car. I went back home again.

Q. Did you do any picket duty? [233]

A. Yes, sir.

Q. When?

A. I came down the next morning. Mr. Anger told me to stay around with the rest of the boys.

Q. Did you have any conversation after the lock-

(Testimony of Larry Doyle.)

out with any of the bosses or officials of the company, other than the one that you had Wednesday night with Torenson?

A. No, sir.

Q. Did you have any experience in connection with direct action or violence on the picket line?

A. No, sir.

Q. Weren't you beat up?

A. Oh yes, I was, one night.

Q. Tell us about that.

A. Well, I was coming home from town——

Q. (Interrupting) What night was this?

A. I don't remember just exactly what night.

Q. How long after the lockout, two weeks to——

A. Two and a half weeks.

Q. All right.

A. I came by our emergency kitchen there.

Q. What time was that?

A. Ten-thirty.

Q. At night?

A. Yes, sir. [234]

Q. Go ahead.

A. I came by the kitchen and I noticed a truck——

Q. (Interrupting) What kitchen is this you are speaking of?

A. The emergency kitchen.

Q. For the pickets to eat?

A. Yes.

(Testimony of Larry Doyle.)

Q. Where was it located?

A. Three blocks from the cannery.

I saw one of the fellows standing on the running board, talking to somebody in the cab, anl I thought it was one of our boys talking to a truck driver.

Q. Whose truck was this?

A. I don't know—it belonged to Johnny Hartman, the contractor. So I looked in there; I saw this fellow. I recognized him as one of the men working in this plant. I thought it funny they would be parked down there.

Q. You mean the fellows who were working after the lockout?

A. Yes, right next to our kitchen.

I turned around, went up to the corner. Just as I came back, all these boxes started flying off the truck, and a bunch of guys running out.

Q. Did you recognize any of them?

A. I did, yes. [235]

Q. Who were they?

A. I don't know the last names. I know them by first names. I recognized Joe, I don't know his last name.

Q. Who was he? What was his job?

A. He worked in the front end. He was a checker.

Q. He belonged to the union?

A. No. And Mrs. Remington, the floor lady's son—her son, I don't know his name: Stoney Gardner——

Q. (Interrupting) Who is he?

(Testimony of Larry Doyle.)

A. He is another fellow who worked in the front end. He acted as kind of watchman, packed a gun while they were loading in the back end during the lockout. That is about all I can think of right then that I recognized.

Q. What happened?

A. So, when I seen the fellows jump out of the car, out of the truck like that—I thought—well, the fellow in there was a crippled kid in there. I thought they were going to murder him. I jumped into the car, the first one I saw in there. I yelled to him that they were wrecking the kitchen. I got out of the car. There was fighting out in the street. I started to go out in the street.

This "Joe," he came back. He said "Here is one of the——

Q. (Interrupting) You needn't be afraid to give the exact words.

A. (Continuing) "Here is one of the sons of bitches! Get [236] him!" I turned around; just as I turned around he grabbed me by the neck. There was another fellow I recognized as one of the mechanics. He had a sheet metal hammer with a square head on it. He started to hit me on the head. He couldn't hit me because this "Joe" was too fat to get under his arm. He was hitting me on the shoulder with it. The police arrived. They rounded them all up. They got them all rounded up in one place.

I heard some shooting around the corner. I

(Testimony of Larry Doyle.)

went over there to see what it was. I saw one of our fellows lying on the ground.

Q. Who was it?

A. I don't remember who it was. I just knew it was one of our boys. Then the police arrived. They rounded everybody up; stood up against the wall, started talking to us. They let me go.

I saw my wife over there across the street. I went to see if she was all right.

Q. Did you receive any injuries in that scuffle?

A. Just a few bruises, that is all.

Q. When did you get your button?

A. I got my union button Tuesday morning, I believe.

Q. Were you present on Monday at 6:00 or 6:30, when Mr. Huddleson spoke to the men?

A. Yes, sir. [237]

Q. Can you relate what took place at that meeting? By the way, how did you learn about the meeting?

A. I was working on the machines. Ernie Reich came around. He said, "Huddleson wanted to talk to all of the boys in the front of the warehouse."

I went up there. All the boys were gathered up there. We just sat down wherever we could. He started in.

He said that he heard we had joined the union; and he said he didn't have anything against the union. He belonged to one himself. He packed an iron worker's card for 20 years—something like that.

(Testimony of Larry Doyle.)

He said he didn't have anything against them; but he said he wouldn't pay 62½ cents an hour in his warehouse—it was impossible. The cannery was run on a competitive basis. If all the other canners in the state would pay 62½ cents he would pay it.

He said he didn't want to be the goat. Some of the boys told him why didn't he start and the others would follow?

He said he didn't want to be the goat. He would probably go broke by the time they got around to it.

He kept talking worse all the time. He used a lot of bum language there. He said we would see him "in a wooden kimona" before he would pay 62½ cents an hour.

Q. You stated he started out by saying he "didn't have anything against the union," and that he was a union man [238] himself. Did he end up by using language in a similar vein?

A. Not in the end, he got hotter.

Q. What did he say about a union then?

A. He didn't say anything direct about the union in particular. He just said about us, the idea, and everything in general.

Q. By "the idea," you mean joining the union, do you?

A. Yes, sir.

Mr. St. Sure: I suggest you are putting words in the witness' mouth, and trying to read his mind.

(Testimony of Larry Doyle.)

I suggest that counsel can't ask anything so leading and suggestive as that.

Trial Examiner Traynor: Yes, you can't ask that.

Q. (By Mr. Edises) What did you have in mind when he referred to "the idea"?

A. Well, he said the cannery was costing him so much a case now to put it up, and he could have—if we decided we wanted to walk off, he could have another contractor walk in the other door and put the stuff out for a cent less a can; and he said he would give us two days to think it over.

What I thought he meant was, we could either throw our buttons away, and go back to work, or we could take a walk—whichever we wanted.

Q. Would you take your job back if it were offered to you?

A. Yes, sir.

Q. Did you say you worked on the printing machine? [239]

A. No, I worked on the labeling machine.

Q. Labeling cans?

A. Yes, sir.

Q. Not marking cartons?

A. No, sir.

Q. Do you know whether the Stokely and Santa Cruz men were changed around from one warehouse to the other?

A. Yes, sir.

Q. Did that ever happen to you?

(Testimony of Larry Doyle.)

A. Yes, sir.

Q. More than once?

A. No, just once.

Q. Just once?

A. Yes, sir.

Q. Whose name appeared on your pay checks?

A. Gaddis & Kenny.

Q. Did the name of the Santa Cruz Fruit Packing Company appear?

A. Yes, sir.

Q. Did the Stokely men receive the same checks?

A. I did when I worked at Stokeley's.

Q. You received the Santa Cruz check?

A. Yes, I received the two checks.

Q. Do you know who did the hiring and firing in Santa Cruz?

A. Well, no. I was taken from the front end in the ware- [240] house. Stan Torenson hired me for the warehouse.

Q. Do you know Mr. Gomez?

A. Only by sight.

Q. Did you ever see him around the plant on—did you see him around the plant on Monday, August 5?

A. No.

Q. Tuesday?

A. No, sir.

Q. The first time you saw him was when he stuck his head out?

A. Yes.

Q. Did you see any strangers around the plant

(Testimony of Larry Doyle.)

that Wednesday night other than the guards that you have spoken of?

Mr. Edises: I don't know if he said they were strangers or not.

Mr. St. Sure: Extra watchmen.

Q. (By Mr. Edises) Did you see any other persons?

A. I saw some through the door. I saw some strangers in the warehouse. I saw two Chinamen and a trucker.

Q. Two what?

A. Two Chinamen.

Q. Anybody else?

A. No.

Mr. Edises: That is all [241]

Cross Examination

Q. (By Mr. St. Sure) The day that this fight occurred near the soup kitchen, or the kitchen that you had, did you know that earlier that day, or shortly after, before that time, some of the Santa Cruz employees had been beaten up, pulled off a truck?

A. No, sir.

Q. You hadn't heard about that?

A. No, sir.

Mr. St. Sure: That is all.

Trial Examiner Traynor: We will rest until 10 o'clock tomorrow morning.

(Thereupon at 4:00 o'clock p.m., the hearing in the above-entitled cause was adjourned until 10 o'clock a.m. Tuesday, December 24, 1935.) [242]

[Title of Court and Cause.]

Extra Sessions Courtroom
Alameda County Court House
Oakland, California

Tuesday, December 24, 1935.

Met, pursuant to adjournment, at 10:05 o'clock a. m.

PROCEEDINGS

Trial Examiner Traynor: You may proceed.

Mr. Edises: Call Mr. Costa.

GEORGE COSTA,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows: [243]

Q. (By Mr. Edises) What is your name?

A. George Costa.

Q. And your address?

A. 1951 East 24th Street.

Q. Are you married?

A. No.

Q. Who did you work for just prior to the recent lockout?

A. Santa Cruz Cannery.

Q. Santa Cruz?

A. Yes.

Q. When did you go to work for them?

A. Let me see—it was about eleven months ago.

Q. When?

A. About eleven months ago.

Q. Were you receiving the same wages as other men in the warehouse?

A. 35 cents an hour.

(Testimony of George Costa.)

Q. 35 cents an hour?

A. Yes.

Q. What was your job, what did you do?

A. I did everything; general warehouse work.

Q. Did you do loading and trucking into box cars and trucks?

A. Yes.

Q. Were you present on Monday at around 6 o'clock when [244] Mr. Huddleson spoke to the men?

A. Yes.

Q. Were you wearing your union button at the time?

A. Yes.

Q. And what did Mr. Huddleson say at that time?

A. Well, he said about the boys joining the union; that nobody had told him about it; that he knew all along they were in the union; said that he didn't care if the boys joined the union. He talked nice at first and toward the end he said he wasn't going to pay the union scale; said before he would do that, he would be first wearing a wooden kimona.

Q. Did he say anything else?

A. He did a lot of swearing.

Q. Did he say anything else about the union?

A. No; said he wasn't going to be the goat.

Q. Do you remember any reference to a contractor?

A. Yes.

Q. What did he say?

(Testimony of George Costa.)

A. He said, "If you boys don't want to work here," he says, "all you have to do is to get out and you go out one door and we will have a contractor come in the other door."

Q. When did you first learn about the initiation meeting which was to be held on Wednesday night?

A. I think I knew about it either Monday or either——

Q. (Interrupting) Do you remember who told you about it? [245]

A. I don't know exactly who told me. Some of the boys told me about it.

Q. Were you working on the day or night shift at this time?

A. Well, Monday I was working day shift and Tuesday I went to the night shift, Tuesday night.

Q. And what time did you knock off Wednesday morning?

A. Wednesday morning? I would say about 6 o'clock, 6:30.

Q. In the morning?

A. Yes.

Q. What time did you show up for work again on Wednesday?

A. I was there about 6, I guess; ten minutes to 6.

Q. Ten minutes to 6?

A. About that time, ten minutes to 6.

Q. What did you find when you arrived at work?

A. Well, we walked over there and——

(Testimony of George Costa.)

Q. (Interrupting) Who do you mean by "we"?

A. Me and Clifford and Algrava. We walked in and we talked to Torenson, and Torenson said there was to be no night work that night.

Q. What else was said?

A. That is about all he said that I heard.

Q. Did Mr. Torenson explain his statement that there would be no night work that night?

A. I think he said something about a meeting.

Q. What? [246]

A. Something about going to a meeting.

Q. Do you remember his exact words in that connection?

A. No.

Q. Well, what did you do then?

A. I turned around and went out, and went home and dressed up and went to the meeting.

Q. Did you see any strangers present around the warehouse at that time?

A. Yes. To be exact, I walked around by the bean labeling machine and there was a man there with a gray suit on, a stranger.

Q. Do you know who he was?

A. Might have been Gomez. I couldn't say for sure. I still don't know who he is. I saw some Chinamen.

Q. What?

A. Some Chinamen working a truck.

Q. Now, did you show up the following morning?

A. Yes.

(Testimony of George Costa.)

Q. That is Thursday?

A. Thursday morning.

Q. What did you do then?

A. I went down by the warehouse and I was going to park by the warehouse and the watchman said, "Don't park there," and I went down and parked in front of the cannery.

Q. What time was this? [247]

A. Around six in the morning. We went inside the cannery, in the front door and back into the warehouse and talked to Torenson.

Q. You spoke to Torenson that morning?

A. Yes.

Q. And what was said?

A. I asked him, "Didn't Bob tell you about the boys going to the meeting?"

He said, "No, Bob didn't say a thing."

Q. What else was said?

A. I asked him, "Do we go to work?"

He said, "Well, if you want to work, you will have to see the contractor."

Q. Was that all?

A. Yes, he said, "See the contractor."

Q. What did you do then?

A. We had union buttons on.

Q. What?

A. We had union buttons on. I said, "The best thing for us to do is to wait outside."

He said, "Yes, it will be better for me, and then we will have no trouble." It would make it easier on him.

(Testimony of George Costa.)

Mr. Edises: Will you read the last answer, please.

(The answer referred to was read aloud by the reporter as above recorded.) [248]

Q. (By Mr. Edises) Did you see any guards around on Thursday morning?

A. Yes.

Q. About how many?

A. Two.

Q. Were they armed?

A. I don't know; I couldn't say.

Mr. Edises: No further questions.

Cross-Examination.

Q. (By Mr. St. Sure) On Wednesday evening when you went to the plant about ten minutes to six you say you saw Mr. Torenson there. Can you tell us just what he did say to you about working that night, or not working that night?

A. He said there wasn't going to be any work that night.

Q. Didn't he tell you if you went to work that you were going to work the full shift, and if you went to the meeting you didn't need to come back?

A. He didn't say that. All he told us was that there was no work that night for the night shift.

Q. Did you see Mr. Reich there that night?

A. I think he was in the office.

Q. Did you talk to him?

A. No.

Q. Did you talk to anybody else while you were there?

A. No. [249]

(Testimony of George Costa.)

Q. Did you ask Mr. Torenson why there wouldn't be any work?

A. No.

Q. Did he tell you the plant was going to shut down that night, or the warehouse was going to shut down?

A. He didn't say nothing of the kind.

Q. What?

A. He didn't say nothing of the kind.

Mr. St. Sure: No other questions.

Mr. Edises: That is all.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Call Mr. Rose.

GEORGE ROSE,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. George Rose.

Q. And where do you live?

A. 1725 C Seminary.

Q. Are you married?

A. Yes sir.

Q. Any children?

A. No.

Q. Who did you work for, Santa Cruz or Stokely?

A. Santa Cruz.

(Testimony of George Rose.)

Q. When did you go to work for them? [250]

A. About September of 1933.

Q. And what was your job?

A. Electric truck driver.

Q. Electric truck driver?

A. Yes.

Q. What did you do?

A. Well, I hauled cans from the cooling floor into the warehouse, and I hauled cases to the shipping door, and I hauled cases from the Santa Cruz plant to the Stokely warehouse, and general trucking.

Q. Were you ever assigned to any other work besides running the electric truck?

A. The first year I was there I worked a year on the shipping gang.

Q. What?

A. The first year I put in on the shipping gang, loading trucks and cars.

Q. Were you ever later assigned to doing loading?

A. Later, yes; once in awhile.

Q. When did you apply for membership in the union?

A. I don't know; a couple of weeks before we were initiated I believe.

Q. Prior to the lockout?

A. Prior to the lockout.

Q. Were you present at the meeting on Monday in which Mr. [251] Huddleson spoke to the men?

A. I was.

(Testimony of George Rose.)

Q. Were you wearing a union button?

A. Yes.

Q. Now, as closely as you can recollect, what did Mr. Huddleson say at that meeting, and what did the men say? What was done?

A. Well, he said, "I understand you fellows joined the union. I see a lot of you have your buttons on." And he went on to say that due to the competitive basis of the canning industry, he didn't see how he could pay 62½ cents an hour while the other 57 canneries in the state weren't paying it, and that he wasn't going to be made the goat and start it in.

Q. What was the impression that you got from Mr. Huddleson's talk as to his attitude toward the union?

Mr. St. Sure: I object to that as calling for a conclusion.

Trial Examiner Traynor: Objection sustained.

A. He went on to say——

Trial Examiner Traynor: (Interrupting) Will you put the question again?

Q. (By Mr. Edises) Go on and tell what Mr. Huddleson said.

A. He said that he always treated us squarely, and if we [252] couldn't cooperate with him, there was the door; and he said, "I will have a contractor come in the other door." He said, "Before I recognize the union in this plant, I will go out in a wooden kimona."

(Testimony of George Rose.)

Trial Examiner Traynor: Mr. Reporter, will you read that answer?

(The answer referred to was read aloud by the reporter as above recorded.)

Q. (By Mr. Edises) Now, when did you learn about the meeting to be held Wednesday night?

A. I should say around 9 o'clock, or possibly a little bit before.

Q. Wednesday?

A. Wednesday morning.

Q. Who told you about it?

A. Bob Anger.

Q. And what did he say?

A. He said, "We are going to knock off at 4:30 to go to the meeting."

I saw him talking to Mr. Torenson and the next trip back I asked him about it, and he said he talked to Mr. Torenson and he said Mr. Torenson said, "O. K., Bob, I am glad you told me."

Q. How did you happen to see Mr. Anger talking to Mr. Torenson? [253]

A. I was trucking cases down the aisleway, which is directly opposite the printing press and also Torenson's office, and I had an idea he was telling him, because he said he was going to tell Mr. Torenson. So the next trip back I asked him.

Q. And he told you that?

A. He said it would be O. K.

Q. That Torenson said it would be O. K.?

A. Yes.

Q. Do you know Mr. Gomez?

(Testimony of George Rose.)

A. Just by sight.

Q. Did you ever see him around the plant prior to Wednesday afternoon?

A. Yes, I saw him Monday, Tuesday and Wednesday.

Q. When and where did you see him on Monday?

A. The first time I saw him was out in the street. Then I saw him in Stokely's warehouse; and then I saw him in the Santa Cruz plant warehouse.

Q. Was this on Monday?

A. On Monday.

Q. What was he doing at those times?

A. Well, he was going around the aisles looking at the stacks.

Q. And when and where did you see him on Tuesday?

A. About the same places.

Q. And what was he doing then? [254]

A. Doing the same thing; just looking around.

Q. Did you have any conversation with him on Tuesday?

A. No, I didn't.

Q. Did you have a contact at all with Gomez in one way or another prior to Wednesday?

A. Not prior to Wednesday.

Q. Did you have any on Wednesday?

A. I did.

Q. And what was the nature of that contact?

A. Well, just at 4:30, when we checked out, I had a tally sheet—I had been taking some cases to

(Testimony of George Rose.)

go to Stokely's warehouse—and Mr. Gomez was in the office at the time, and I turned——

Q. (Interrupting) Which office?

A. Mr. Torenson's office—and I turned my tally sheet over to him, and he took it and looked at it.

Q. What led you to turn your tally sheet over to Gomez?

A. Well, it seems about the day before, either Tuesday or Monday, I was talking to Mr. Morris, who is the foreman of Stokely's warehouse, and I happened to be talking to him and he pointed out Gomez, and he said, "There he is. You fellows just screwed yourselves. That is the guy that is going to take over the contract."

Q. What is your understanding of what he meant by his expression that you fellows had screwed yourselves? [255]

A. Well, that if we kept on, were going to continue our plans to belong to the union, he was going to take over the contract.

Q. Did you have any further discussion with Mr. Morris in regard to similar matters?

A. No, I didn't.

Q. Was any one else present at that conversation with Mr. Morris?

A. No, there wasn't.

Q. Where did it take place?

A. In Stokely's warehouse.

Q. Do you know whether any merchandise of the Santa Cruz or Stokely plants was shipped to places outside the State of California?

(Testimony of George Rose.)

A. Yes.

Q. What are some of those places?

A. Well, foreign, mostly ports in England; and France had a few orders there; also shipped to the Philippine Islands.

Q. How did you learn these places of destination?

A. In trucking cases to the shipping doors into cars I would have to get the orders by shipping marks which were on the cases.

Q. And as the goods were destined to different foreign places you hauled them to different cars, is that the idea, or trucks? [256]

A. Yes, either hauled them to cars, or put them in blocks to be picked up, 500 or 1,000, whatever it happened to be the amount of cases.

Q. Did you likewise notice merchandise destined for other states of the United States?

A. Yes.

Q. What were some of the places they were headed for?

A. New York, Boston, Philadelphia, Mobile, Iowa.

Q. Any other places?

A. There are a lot more.

Q. Do you know approximately how much of the pack went to places outside of California, including foreign and domestic points of shipment?

A. Well, I couldn't give figures, but the biggest part of the merchandise went out of the state.

(Testimony of George Rose.)

Q. Was that true during the entire shipping year?

A. Through the entire year.

Q. Was your job a year round job?

A. It was.

Q. How about the other warehousemen?

A. Well, part of the fellows, they were just on during the busy season. I would say there were about 15 or 20 men in the Santa Cruz the year round.

Q. And how about Stokely?

A. Stokely had about half a dozen there. [257]

Q. I take it, then, that the employment at the warehouses was much less seasonal than the employment in the main cannery, is that correct?

A. Right.

Q. Will you take your job back if it is offered to you?

A. Yes.

Mr. Edises: No further questions.

Cross Examination.

Q. (By Mr. St. Sure) Have you made any attempt to communicate with any one to ascertain whether your job is available, whether you could get it back?

A. No.

Q. On this Monday evening meeting when Mr. Huddleson talked with you men at the warehouse, just go over that conversation again as you remember it and tell us what was said, as you recall it.

A. The first thing was said was that he said,

(Testimony of George Rose.)

"Well, fellows, I understand you have joined the union. I see a lot of you have your buttons on." Then he went on to explain that due to competitive conditions in the canning industry, why he didn't see how he was going to pay 62½ cents while the other canneries in the state weren't paying it.

Q. Up to that point did any of the men say anything, make a response or suggestion to the statement he made about the competitive situation? [258]

A. Not up to then, no.

Q. What else was said?

A. And then he talked about the contractor. He said he would get a contractor; if we went out one door he would get a contractor to come in the other door; that he hadn't been sleeping, or something to that effect.

Q. Did he say he had been talking with a contractor and that the contractor could do it for less money than he was paying at the time?

A. Yes.

Q. He said that?

A. Yes.

Q. Did any of the men say anything about that to him?

A. I don't believe they did, not to my knowledge.

Q. What else was said? He told you that he couldn't pay the scale of 62½ cents while the other members of the canning industry were paying less?

A. Right.

Q. Did he tell you that if the others all paid

(Testimony of George Rose.)

the same scale that he would pay whatever scale they did?

A. Right.

Q. Did anybody say anything about that, any of the men, or anybody there?

A. One of the fellows said, "Why don't you start paying it and the rest of them will fall in?"

[259]

Q. What did he say to that?

A. He said he'd be damned if he was going to be made the goat.

Q. Did anybody say anything to that?

A. I don't recollect.

Q. Didn't he say something about you thinking it over for a day or two and letting him know what you were going to do about it?

A. I believe so.

Q. Did anybody let him know what you were going to do about it before the Wednesday meeting?

A. No.

Q. Did you go and see him, or did anybody else go and see him?

A. No, I don't think so.

Q. Did anybody else—was there anything else said by him that you recall?

A. That is about all.

Q. Do you know how many employes there were in the cannery itself about that time, that is, the first part of August?

A. No, I haven't any idea how many there was.

Q. Several hundred?

A. You mean in the plant?

(Testimony of George Rose.)

Q. Yes. [260]

A. There were several hundred.

Q. You don't know just how many there were?

A. No.

Q. You wouldn't know whether there were 1200, whether 1200 was a high or a low figure?

A. I wouldn't have any idea at all.

Mr. St. Sure: That is all.

Trial Examiner Traynor: Any further questions?

Redirect Examination

Q. (By Mr. Edises) Have you related the substance of the remarks of Mr. Huddleson at that meeting on Monday?

A. Have I related the substance?

Q. The substance of it.

A. You mean just the high points?

Q. Yes.

A. Yes.

Q. Did he say a great deal more along those lines?

A. Well, he did, which I cannot recall. It lasted about 20 or 25 minutes.

Q. What was the purpose of the meeting which was to be held on Wednesday night, the union meeting?

A. Well, of course that would be only my opinion.

Q. It was for initiation, wasn't it?

A. The meeting at the hall?

Q. Yes, at the hall. [261]

(Testimony of George Rose.)

A. Yes, for initiation into the unioon.

Q. What did you understand that time that Mr. Huddleson wanted you to think over?

Mr. St. Sure: I think the conversation is all that we are entitled to know, and not his understanding of it.

Mr. Edises: I submit——

Mr. St. Sure: (Interrupting) You can ask him what Mr. Huddleson told him to think over, but as to his understanding of it, I take it that is a conclusion.

Mr. Edises: My only object in bringing that out is that it is possible to relate the conversation, and at the same time not convey the actual effect of that statement.

Trial Examiner Traynor: I think your last question calls for a conclusion of the witness and that you should confine your questions to what was said at the meeting.

Q. (By Mr. Edises) In Mr. Huddleson's remarks did he make it clear that as far as he was concerned, your belonging to the union meant demanding 62½ cents per hour?

Mr. St. Sure: My objection to that is two-fold:

First, it calls for a conclusion of the witness; and second, it is leading and suggestive.

He can ask for the conversation. It has been related twice. But to ask if Mr. Huddleson made such and such a thing clear, it is certainly a con-

(Testimony of George Rose.)

clusion of the witness, and I object to the question on that ground. [262]

Trial Examiner Traynor: Yes. Objection sustained.

Q. (By Mr. Edises) When you left that meeting on Monday night, rather, that discussion by Mr. Huddleson, what did you understand was your status?

Mr. St. Sure: I object to that as incompetent and immaterial, and certainly calling for his conclusion. Further, I take it that the conversation is the thing that is in interest here, if it is of interest.

Mr. Kagel: I am here representing the union. I am not an attorney, and do not know the fine points of law. My understanding of the law is that we are not supposed to follow the exact rules of evidence, and I frankly object to the continuous objections. My understanding of the proceeding here is that these men are supposed to place the facts, as they understand them, before the Examiner, and these facts may go to certain conclusions that these men had.

After all, we are dealing with something that motivated these men to take certain action, and with reference to certain action taken by their employer, and it seems to me that the Examiner is entitled to know what they had in mind when they left that meeting, which is something you cannot get when you limit it only to the conversation.

Trial Examiner Traynor: I agree that the rules

(Testimony of George Rose.)

of evidence are not controlling. I do think, however, that they should be observed to a great extent. I think we have not [263] strictly followed the rules of evidence heretofore, but I do think that departures therefrom will be in the interest of getting a fair statement of the issues and the evidence thereon. I do think that calling for conclusions of the witness is not necessary to a clear presentation of the issues in the case.

Mr. Edises: Mr. Examiner, may I make this statement: I think that in this case it is extremely important that we understand just exactly what these men had in mind, and what their impression was of Mr. Huddleson's statements at that meeting on Monday. It is extremely important because what we are concerned about is the motives, in part, at least, which led to the various decisive features of this case.

Their motivation is important in that particular instance. The impression that these men had after that meeting, it seems to me, is directly in point.

Now, the bare recitation of what was said on each side does not convey that. It ought to be perfectly evident by now that those men sitting there, or standing around at that meeting not saying anything, were not at the same time devoid of thought. They certainly had certain reactions. Their boss was speaking to them, using strong language. They couldn't very well speak up and introduce a lot of statements which they perhaps had reason to believe would prejudice their standing. [264]

(Testimony of George Rose.)

We have got to find out what those men understood by that discussion, and we cannot get it in any other way than by asking, "What was your impression," or "What did you understand that Mr. Huddleson wanted you to do, or wanted to convey to you at that time?"

I submit that here is one occasion at least when it would be proper to observe that provision of the law which provides that the rules of evidence are not controlling. I admit that in a larger part of the case it is a rule of wisdom to adhere reasonably close to the rules of evidence. But in an administrative hearing of this kind, there are occasions when one ought to depart from the strict rules of evidence, and my feeling is that this is such an occasion.

I seriously request the Examiner's permission to permit these men to state what their opinions were, what they had in mind, or what they understood at the termination of Mr. Huddleson's remarks.

Trial Examiner Traynor: Proceed with your questions, then, Mr. Edises. It is, I think, important to know what the men concluded.

Mr. Edises: Mr. Examiner, I have tried, as far as reasonable under the circumstances, not to get their conclusions, but I do feel in this case it is necessary. It is indicated by the fact that the men remained pretty silent, [265] and they had reason, I feel, for remaining silent during that meeting.

May I be permitted to put that question?

(Testimony of George Rose.)

Trial Examiner Traynor: Yes.

Q. (By Mr. Edises) Now, after that Monday meeting in which Mr. Huddleson spoke to you fellows, what did you understand your status to be, your position to be at that time?

A. Well, we had one alternative; that is all I can see.

Q. What was that?

A. Either throw our buttons away and go back to work, or else go out the door.

Mr. Edises: That is all.

Trial Examiner Traynor: Have you any questions, Mr. St. Sure?

Mr. St. Sure: I might have one question.

Recross Examination

Q. (By Mr. St. Sure) Did you discuss at all the possibility among yourselves of having some representatives of your group go to talk to Mr. Huddleson about the matter?

A. I don't know whether they did or not.

Q. You didn't, in any event?

A. I didn't, no.

Q. When did you first meet Mr. Woods?

A. I first met him at the meeting, the initiation meeting.

Q. On Wednesday evening? [266]

A. Yes.

Q. Did you know that before Wednesday a form of contract had been sent to Mr. Huddleson?

A. Before Wednesday?

(Testimony of George Rose.)

Q. Yes.

A. Mr. Huddleson told us about it at that meeting Monday night.

Q. That was the first you knew of it?

A. Yes.

Q. You had never seen, I take it, any form of proposed contract before you heard about it on Monday evening?

A. No.

Q. You didn't see it at all up to Wednesday evening?

A. I didn't see it then.

Q. Do you now know what that proposed contract contains?

A. I don't know what it contains, outside of the 62½ cents an hour, and eight hours a day.

Q. You don't know what else may have been in it?

A. No.

Mr. St. Sure: That is all.

Mr. Edises: That is all.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Mr. Hughes. [267]

RUFUS HUGHES,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Rufus Hughes.

Q. Where do you live?

A. 2393 Cherry Street, San Leandro.

Q. Are you married?

A. Yes.

Q. Any children?

A. No.

Q. Do you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you go to work for them?

A. In April 1932, I believe.

Q. Were you ever shifted over to Stokely at any time?

A. I did work for Stokely's, yes.

Q. Did you receive the same pay check as you had received formerly, the same type of check?

A. The same type of check, but separate checks.

Q. Santa Cruz checks?

A. Santa Cruz, yes.

Q. What were your hours?

A. Well, usually—that depended a lot on the season. [268]

Q. During the month of July 1935, and the early part of August, what were your hours?

A. Well, from seven in the morning until what-

(Testimony of Rufus Hughes.)

ever time I finished, usually from 4:30 to 10 o'clock at night.

Q. And what was your job?

A. Printing; running the printing press.

Q. What did you print?

A. I branded the cases.

Q. Were you the one who printed the destinations on the cases?

A. I was, yes sir.

Q. Can you mention some of the foreign points of destination of goods from the labels which you printed on the cartons?

A. Yes.

Q. What are they?

A. London, Liverpool, Glasgow——

Mr. St. Sure: (Interrupting) Without admitting the materiality of that matter of the destination of merchandise, to save having a lot of this matter go into the record, I am willing to state there is no question but that the goods manufactured or canned by the Santa Cruz Company do reach purchasers in foreign countries, as well as in other states of this Union.

We don't admit the materiality of that in this proceeding; do not admit that the mere fact that that merchandise [269] does reach such destinations means the Santa Cruz Company is engaged in interstate commerce. However, for the sake of preventing merely cumulative matter in the record, it may be understood that there is no question that the

(Testimony of Rufus Hughes.)

merchandise does reach points in other states of the Union outside of California, as well as foreign countries.

Trial Examiner Traynor: That is one of the important issues in the case, whether interstate commerce was involved, and testimony as to the acts connected with transportation of the goods and the shipment of goods into the cannery and out of the cannery, I think are material to it.

Mr. St. Sure: I wasn't thinking of the acts themselves, but I was thinking merely of the listing of New York, Chicago, Philadelphia and so on, by each witness. I assume they would all give about the same answer as to the list of those places.

Mr. Edises: To save time can we stipulate to the fact, namely, that the goods were shipped to other states and foreign countries?

Mr. St. Sure: I will stipulate with you that all merchandise sold in the United States was sold f. o. b. under contract from Oakland, and the form of contract we previously furnished to the Labor Board; likewise that the shipments to out of country points were under a c. i. f. contract, the form of which has been submitted to the Labor Board—some [270] c. i. f. and some f. o. b. Oakland.

Those forms of contract, I assume you have. Beyond that the physical facts they may desire to develop concern the nature of those shipments, and how made, and the physical handling of them, of course, they may develop by testimony if they see fit.

(Testimony of Rufus Hughes.)

Mr. Edises: I would like to get a stipulation, if you are agreeable, similarly to the quantities. In other words, if you can give me an idea of about how much was shipped to foreign and out of state points, I think we can save a great deal of time.

Mr. St. Sure: I assume that information is available and can be obtained. A previous request was made for it, and a demand, prior to this hearing. We declined to give it without a statement being made as to the reason for the request which, I thought, we were entitled to have.

Any stipulation that I may make in this connection, as well as those that I have made, or offered to make at this time, are not to be deemed as any admission of materiality or of the effect that we are admitting that the Board has jurisdiction in all the things we first objected to. However, if it will facilitate the hearing, and without being taken as any waiver of objection or claim that we have made, I will endeavor to secure the quantities and the amounts that Mr. Edises has asked. [271]

Mr. Edises: If you will do that, I think it will save a good deal of time.

Mr. St. Sure: Likewise, at the same time I would like to be able to offer the form of contract which indicates, from a legal point of view, we feel, the manner in which these shipments were made.

Mr. Edises: I have the forms here. I was planning to introduce them a little later. But if you will have that information for me, I will not direct

(Testimony of Rufus Hughes.)

any further questions then to the points of shipment and quantities shipped.

Mr. St. Sure: I think it might be better to have it more accurate because, after all, I think these would be estimates from these men, and they could not be expected to accurately estimate them when they only handled a portion of the movement.

Mr. Edises: Granted.

Q. (By Mr. Edises) Were you present on Wednesday morning around 8:30 a. m. in the Santa Cruz warehouse when Mr. Anger had a conversation with Mr. Torenson?

A. I was.

Q. Did you hear the conversation?

A. I did.

Q. Where were you standing at the time with reference to these other two?

A. Standing by the printing press. [272]

Q. And how far away from Mr. Anger and Mr. Torenson?

A. Well, not over a couple or three feet.

Q. And what was said in that conversation?

A. Well, Bob asked Stan if the boys could have permission to go to the meeting that night. He told him the boys wanted permission to go to the union meeting that night to be initiated.

Q. And what did Stan say to that?

A. He said, "O. K., Bob, I will arrange it."

Q. Anything further said that you now recall?

(Testimony of Rufus Hughes.)

A. No, I don't remember anything else, not right then.

Q. Were you present at any other time during that day when Mr. Anger spoke to Mr. Torenson?

A. I was.

Q. What time was that?

A. It was sometime in the afternoon; I imagine around 2:30 or 3 o'clock.

Q. Did that take place at the same place in the warehouse?

A. Yes sir.

Q. And what was said in that conversation?

A. Bob told Stan he had heard rumors around that anybody attending that meeting that night would be fired, would lose their job.

Q. Yes.

A. And Stan said he hadn't heard anything about it; he [273] hadn't given any such orders as that.

Q. What else was said, as far as you can now remember?

A. And he said that Huddleson hadn't told him to issue any orders to that effect.

Q. Anything further said?

A. Not that I remember.

Q. Did you go—what time did you knock off on Wednesday?

A. 4:30.

Q. How did you go about the process of checking out?

(Testimony of Rufus Hughes.)

A. I checked out any time when my work was finished.

Q. Was your work finished that day at 4:30?

A. Yes.

Q. Did you ordinarily have to get Mr. Torenson's O. K. before you could check out when your work was finished?

A. No.

Q. Were you present at the discussion on Monday when Mr. Huddleson spoke to the men?

A. Yes sir.

Q. Were you wearing your union button?

A. Yes sir.

Q. Do you remember what Mr. Huddleson said? Before we get to that, how did you learn about that meeting?

A. The meeting on Wednesday night?

Q. No, I am speaking now of the Monday meeting, around 6 o'clock, when Mr. Huddleson spoke to the men. [274]

A. Mr. Torenson told me.

Q. What did he say to you?

A. Well, he told me, says, "Stick around for a few minutes before you go to work because Huddleson is coming out and giving you boys a talk."

Q. What was said and done at that meeting when Huddleson spoke to you?

A. He got all the fellows together and told them he understood they had joined the union, and he wanted to know what their idea was, what they expected to gain by it.

(Testimony of Rufus Hughes.)

Q. What else?

A. No one would answer him, so he says he understood that the union scale was 62½ cents an hour. He said, "Do you fellows expect to get that from here?"

Then he went on to say that he couldn't afford to pay 62½ cents an hour, if that was the scale that the union demanded, because there were 57 other canneries in California that didn't belong to the union and were only paying from 35 cents to 40 cents an hour, and that he couldn't pay more than they did and stay in business.

He said besides that he wouldn't have anybody from the outside telling him how to run his business; that he was perfectly capable of running it himself.

Q. Did he say anything else that you now remember?

A. Well, he made quite a speech, but I don't remember all [275] of the things he said, except he said he would give us a couple of days to think it over as to what we were going to do about it.

Q. What did he want you to think over?

A. Whether we were going through with the idea of being in the union, or come back to work for what we were getting then.

Q. Did you speak to Mr. Huddleson at any time Wednesday?

A. No.

Q. Do you know Mr. Gomez?

A. When I see him, is all.

(Testimony of Rufus Hughes.)

Q. When did you first see him around the Santa Cruz plant?

A. On Monday, I believe.

Q. And where was he at the time?

A. Just walking around in the warehouse.

Q. Did you see anybody else?

A. You mean any one I didn't know?

Q. Yes.

A. Strangers—yes, I saw some Chinamen.

Q. When was that?

A. The day before the lockout.

Q. Was that Wednesday?

A. On Wednesday, yes.

Q. What time did you see them?

A. When I first noticed the Chinamen it was about 3 o'clock [276] in the afternoon, I believe.

Q. On Wednesday?

A. Yes.

Q. Do you remember how many you saw?

A. There were only a couple, the ones I saw.

Q. Where did you see them?

A. Standing by the office; that is, the warehouse office.

Q. With Mr. Gomez?

A. With Mr. Gomez.

Q. Who did the hiring and firing at the Santa Cruz plant?

A. I really don't know. I think the superintendent was supposed to, but still Mr. Torenson, if he needed some one right away, he would hire them.

Q. Who did you take your orders from?

(Testimony of Rufus Hughes.)

A. Torenson and Ernie Reich.

Q. Did you show up for work Thursday morning?

A. I did.

Q. What did you find?

A. I found all the doors locked, and all the fellows standing outside.

Q. Did you try to get in?

A. I did.

Q. What happened?

A. I was told to stay out.

Q. How did you go about trying to get in? [277]

A. First I parked my machine there where I usually parked it and I was told I couldn't park it there.

Q. Who told you that?

A. One of the watchmen.

Q. Do you remember just what was said?

A. He said, "You can't park your car here today."

I asked him why, and he said he didn't know; that it was just orders from headquarters to keep the place clear there.

Q. Did you serve on the picket line?

A. I did.

Q. Did you ever commit any acts of violence?

A. No.

Q. Did you ever receive any instructions from the union ordering you to use any violence or intimidation of any kind?

A. No.

(Testimony of Rufus Hughes.)

Q. Would you take your job back if offered to you?

A. Yes sir.

Mr. Edises: No further questions.

Trial Examiner Traynor: We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Traynor: You may proceed with your cross examination, Mr. St. Sure. [278]

Mr. St. Sure: I have no questions.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Mr. Dolin.

LUTHER DOLIN,

called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Luther Dolin.

Q. Where do you live?

A. 947 Watkins, Hayward.

Q. Are you married?

A. Right.

Q. Any children?

A. No.

(Testimony of Luther Dolin.)

Q. How long did you work for Stokely, or did you work for Stokely?

A. Yes.

Q. How long?

A. About three or four months.

Q. What was your job there?

A. I was stacking cases at the time of the lock-out.

Q. Were you ever shifted around from Stokely to Santa Cruz? [279]

A. I was, and that was a part of my work. We were working piece work. We unloaded some box cars and loaded others, piece work.

Q. During the month of July and the early part of August, what were your hours at Stokely?

A. We worked all hours; sometimes when we finished what we had to stack in the day, we went home; other times after we finished the piece work, we worked hour work, running from 2 o'clock, I imagine, to 7 or 8 o'clock.

Q. Was there any particular time when you were more likely to get off than any other time?

A. No, there was no certain time.

Q. Did you know Mr. Gomez?

A. By sight.

Q. When did you first see him around the Santa Cruz plant?

A. On August 5th, on Monday.

Q. And what was he doing then?

A. We were stacking cases right close to the door that leads to 57th Avenue.

(Testimony of Luther Dolin.)

Q. Where?

A. To 57th Avenue. The door faces 57th Avenue. I noticed this fellow standing there at the door, at the desk, and I presume he was talking to Mannie Frates—that is the straw boss there— and I just noticed him there and didn't know who he was a the time. [280]

Q. When did you find out who he was?

A. On Tuesday, the following day.

Q. And how did you learn that?

A. Well, we were through and was waiting for George Rose to bring in some more cases to be stacked, and I noticed the fellow standing at the door. He had been walking around the warehouse and I asked Stan Morris who he was. I thought he was some big shot from Indiana, and I asked—

Q. (Interrupting) Why did you think he was a big shot from Indiana?

A. I understood they had big warehouses out there, Stokely did, and he was looking around, watching the fellows work, and I asked Stan Morris who he was. He said it was Gomez.

Q. What else was said?

A. That was all that was said then.

Q. Did you have any further conversation with Mr. Morris about Gomez?

A. On Wednesday I was speaking about Gomez. He spoke to me, rather, when we were waiting for the cases, because we were pretty well caught up with the fellow on the jitney.

Q. About what time was this?

(Testimony of Luther Dolin.)

A. I couldn't say the exact time. I know it was on the day before the lockout. Stan Morris asked me if I had my button. Prior to that he asked me three or four times if I still had my union button.

[281]

Q. How did he happen to mention that?

A. I don't know . . . He just asked.

Q. Were you wearing a button?

A. No, I didn't have a button then. I asked him about it, and he said, "Well, you are playing safe that way."

Q. What?

A. He said, "You are playing safe that way." So I asked him, "What do you mean?"

He told me that if I wanted to continue stacking cases, I had to see Gomez.

Q. Can you place the time of that conversation as close as you can remember?

A. I think it was around in the morning sometime.

Q. On what day?

A. On Wednesday.

Q. Now, when did you apply for membership in the union?

A. I asked about it after the lockout.

Q. After the lockout? You hadn't belonged previous?

A. No.

Q. You are not one of the complainants in this case?

A. Pardon?

(Testimony of Luther Dolin.)

Q. You are not one of the complainants in this case?

A. Well, I had got into the union all right, but I was—Thursday when I wanted to go back to work, that is when they told me that there was no work. [282]

Q. Who told you there was no work?

A. It was Mr. Gomez himself.

Q. What time was this?

A. Thursday morning, on the day of the lock-out.

Q. Was this early in the morning?

A. Yes, it was about a quarter of six, I imagine.

Q. Well, how did you happen to get to see Gomez?

A. Every day I had to count the cases we had to stack, and I walked around the cafeteria there, just about a quarter after six, and we walked into the cafeteria and from there I went into the warehouse to count the cases, and before I had gone in the men's rest room, and as I was going out, Gomez himself stopped me. I didn't know it was Gomez then, except from the day before. He had on some kind of a jacket, and I didn't recognize him as the man who had been over to Stokely's.

He said, "Have you got your button with you?"

I said, "Yes." And I pulled out my Santa Cruz button—it is a little brass button.

Q. Was that a union button?

A. No.

(Testimony of Luther Dolin.)

Q. What kind was it?

A. A registration button.

Q. Means of identification?

A. Yes. So I thought he referred to that. I didn't know [283] who he was. I pulled the button out and showed it to him.

He said, "Where are you going?"

I said, "To count the cases."

He said, "O. K."

So I walked into the warehouse. Just as I got to the warehouse, I noticed a bunch of Chinamen and a colored fellow working on the pork and bean machines, labeling machine, and I wondered what the score was. Then Mr. Gomez himself walked up to me.

Q. Who?

A. Gomez. He said, "What do you want here?"

I told him, "Nothing. I work here."

He says, "No, you don't. I got my own crew."

And so I just took it for granted he knew what he was talking about, so I walked out again.

As I got outside I met George, one of the watchmen.

Q. Who is that?

A. George, the watchman. I asked what was going on in there, and he said, "Well, I don't know." He said the fellows were told to be kept out of there today.

I said, "Why the guards?"

"I was told to watch that the fellows didn't get into trouble," he said.

(Testimony of Luther Dolin.)

And then I met some of the boys and we started talking, and then that is when they told me about it. [284]

Q. Did George say who told him the fellows were to be kept out?

A. He said it was orders from the boss. So I took it for granted he meant Mr. Huddleson.

Q. Will you take your job back if it is offered to you?

A. I would.

Mr. Edises: That is all.

Cross Examination.

Q. (By Mr. St. Sure) Who was your immediate superior? I mean, who did you take orders from in working in the Stokely warehouse?

A. Most from Mannie Frates. He received his from his boss, Stan Morris.

Q. Did you ever go and see Mr. Morris, or anybody else, to inquire about going back to work?

A. No, I just seen them on the day, on the same day I was talking to George.

Q. That was on Thursday?

A. On Thursday morning, right. He was standing at the doorway laughing.

Q. Morris?

A. Yes.

Q. What did you say to him, and what did he say to you on that occasion?

A. He was standing there grinning, that is all. [285]

(Testimony of Luther Dolin.)

Q. Did you talk to him?

A. He didn't say anything.

Q. Did you ask him about getting your job back, or anything of that kind?

A. No, because he told me about the contract the day before.

Q. You haven't since that time talked with any one out there concerning getting your job back?

A. I have not.

Mr. St. Sure: That is all.

(Witness excused.)

Mr. Edises: John Valin.

JOHN VALIN,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) Are you married, Mr. Valin?

A. I am.

Q. Have you any children?

A. One.

Q. How old?

A. 3½ years.

Q. Where do you live?

A. Hayward, 635 Dean Street.

Q. Did you work at the Stokely plant or the Santa Cruz warehouse?

A. Stokely. [286]

(Testimony of John Valin.)

Q. Were you shifted around from one warehouse to the other?

A. I was.

Q. And how was that determined?

A. Well, sometimes Stokely was busy and I worked in the Stokely warehouse; and sometimes Santa Cruz was busy and I would go over there while Stokely was slack.

Q. Who did you take orders from at the Santa Cruz warehouse?

A. Ernie Reich and Torenson.

Q. And at Stokely's?

A. Stan Morris and Mannie Frates.

Q. What kind of work did you do?

A. Catching, labeling machine, loading cars, box cars and trucks.

Q. Were you changed around from one job to another indiscriminately?

A. I was.

Q. And did loading one day, stacking the next, and so on?

A. Yes.

Q. Was that likewise true of the other men in the warehouse?

A. Yes sir.

Q. Who did you receive your pay check from?

A. Santa Cruz. [287]

Q. Likewise, while you were working for Stokely?

A. Yes.

(Testimony of John Valin.)

Q. And that check had the name of the Santa Cruz Fruit Packing Company on it in both cases?

A. It did.

Q. When did you apply for membership in the union?

A. On Wednesday, August 7.

Q. Were you initiated that night?

A. Yes.

Q. You had spoken to Mr. Anger previously?

A. Yes.

Q. And asked about joining?

A. Yes.

Q. When did you get your button?

A. On Monday, Monday noon.

Q. Who gave it to you?

A. Bob.

Q. Did you know that Mr. Woods was the business manager of the union?

A. I did.

Q. What was your object in joining the union?

A. Better conditions and hours.

Q. Did you have any specific ideas in mind, any specific demands? What was your idea on the subject of wages?

A. 62½ cents an hour. [288]

Q. You say 62½ cents an hour. Where did you get that idea? Did Mr. Anger mention it to you?

A. He did.

Q. Was that at the time you first spoke to him about joining the union?

A. Yes.

(Testimony of John Valin.)

Mr. St. Sure: Might I suggest, after all, that if the witness doesn't answer a direct question, that Mr. Edises should not then ask, "Did Mr. So and So speak to you about it?" I do not want to be technical in my objections, but I do object to questions when the answers are obviously suggested by the questions.

Mr. Edises: I likewise do not want to be technical, but you will understand——

Mr. St. Sure: (Interrupting) Then let's put it on a basis of fairness and not technically. Let's get at the facts, and I have no objection to you going about it in your own way, but I think when you ask the witness where he got the idea, and then he doesn't answer, and then you suggest, "Did Mr. So and So mention it to you?" that it is not a fair way to proceed, regardless of whether it is technically correct or not. And that is my objection.

Mr. Edises: I am anxious to be fair, Mr. St. Sure.

Mr. St. Sure: I know you are.

Mr. Edises: I don't want to ask any questions, I don't [289] want to pry into his mind and——

Mr. St. Sure: (Interrupting) That is why I make the suggestion that you desist from the practice you are following.

Mr. Edises: I have reason to believe, from my prior conversation with this man, and others, that certain facts are so. These persons are inexperienced as witnesses, and when they get up on the

(Testimony of John Valin.)

witness stand they become a bit frightened, and their memories don't function so well, and I have always understood it is permissible, under such circumstances, to lead them.

Mr. St. Sure: I don't know what there is to be frightened about. Neither the reporter, the Examiner, myself or you have been fierce so far.

Mr. Edises: I realize that, but these men are not accustomed to testifying on the witness stand.

Mr. St. Sure: I urge my objection and stand upon it.

Trial Examiner Traynor: Will you try to frame your questions a little bit differently, Mr. Edises?

Mr. Edises: Surely.

Q. (By Mr. Edises) Were you present at the meeting on Monday around 6 o'clock, when Mr. Huddleson spoke to the men?

A. I was.

Q. And who told you about the meeting?

A. Stan Morris came over and told me. [290]

Q. What was said at that time?

A. We were loading the box car, and Stan came over about 5:30 and told me, he says, "Well, you boys had better make your minds up by 6 o'clock."

And I said to Stan, "What do you mean by making our minds up?"

So he came back with a fat fellow. I don't know his name. He is a buyer. And the fat fellow said, "You four fellows go up and talk to Huddleson."

I said, "Why the four of us?"

(Testimony of John Valin.)

Then he said, "Wait until the Santa Cruz gang get back from supper and Mr. Huddleson will have a speech with you boys."

That is what we did.

Q. Was that all that was said at that time?

A. Yes.

Q. Did you go to that meeting?

A. I did.

Q. And were you wearing your union button?

A. I was.

Q. Do you remember what was said at that meeting?

A. Well, Mr. Huddleson said that he couldn't pay 62½ cents an hour; that before he would pay it, he would be in a wooden kimono.

Q. What did he say about the union? [291]

A. Well, he said the union was a good thing, but he said he couldn't pay it unless the other 57 canneries did; that he wouldn't want to be made the goat.

Q. Did Mr. Huddleson say anything at the end of his talk to you about leaving with you any proposition of any kind?

A. I don't know.

Q. Were you paying close attention to what was said at the meeting?

A. I was, but I don't remember.

Q. Now, when Mr. Morris told you men that you were to make up your minds by 6 o'clock, was any one else present besides you and Mr. Morris?

(Testimony of John Valin.)

A. A lot of the boys were around there working.

Q. Do you remember any of them?

A. I don't know who was around. I can't think of the names of who was around. They were working back and forth.

Q. How about Mr. Fields?

A. Mr. Fields and Bud Ellis was there, I imagine.

Q. Do you know Mr. Gomez?

A. I didn't at the time, no.

Q. Do you know him now?

A. I do.

Q. By sight?

A. By sight.

Q. Did you ever see him around the plant before Wednesday, [292] August 7th?

A. Seen him Monday.

Q. Where did you see him?

A. Talking to Mannie Frates and Stan Morris, right across from the catching machine.

Q. At the Stokely warehouse?

A. Yes.

Q. Did you hear the conversation?

A. I didn't.

Q. When did you see him again?

A. I saw him on Wednesday.

Q. You didn't see him on Tuesday?

A. No.

Q. Where did you see him on Wednesday?

A. Going across to the Stokely warehouse from the Santa Cruz.

(Testimony of John Valin.)

Q. About what time?

A. About 9:30.

Q. Wednesday morning?

A. Yes.

Q. What time did you quit on Wednesday?

A. 4:30 when I was through.

Q. You were through with your work?

A. Through with my work.

Q. Who told you you could leave? [293]

A. Nobody. I was just through with my job.

Q. Was that the way you ordinarily quit?

A. Yes, when I was through with my work I would check out and go home.

Q. No special time?

A. No special time.

Q. Did you go to the meeting that night?

A. I did.

Q. When did you first learn there was to be a meeting that night?

A. From Bob Anger.

Q. When did he tell you?

A. I think it was on Tuesday sometime; sometime around Tuesday.

Q. Do you remember what was said?

A. I don't.

Q. Will you take your job back if it is offered to you?

A. Yes.

Q. What is that?

A. Yes.

Mr. Edises: That is all.

(Testimony of John Valin.)

Cross-Examination

Q. (By Mr. St. Sure) You say you would take your job back if offered to you. Would you work with men who were not members of the union? [294]

A. I don't know what you mean.

Q. Well, I mean, assuming that you went back to work in the warehouse, would you work in the warehouse where there were men employed who did not belong to the union that you belonged to?

A. I wouldn't.

Q. Pardon?

A. I wouldn't.

Q. You would not?

A. No.

Mr. St. Sure: That is all.

(Witness excused.)

Mr. Edises: May we have a recess for a couple of minutes?

Trial Examiner Traynor: Yes.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. Edises: Ivo Rocha.

IVO ROCHA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Your name is what?

A. Ivo Rocha.

Q. Are you married?

A. Yes. [295]

Q. Any children?

A. Yes, I have a boy.

Q. What?

A. I have a boy.

Q. How old?

A. 16 months old.

Q. Do you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. What was your work there?

A. Just general warehouse work.

Q. What are some of the things you did?

A. I did a lot of shipping and receiving and general warehouse work.

Q. Were you moved around from one job to another as you were needed?

A. I was. Most of the time I was at the sealing machine.

Q. Who was your boss?

A. Torenson and Ernie Reich.

Q. When did you first go to work for Santa Cruz?

A. First, about two weeks after the start of that plant.

Q. About when was that?

(Testimony of Ivo Rocha.)

A. I guess that was close to three years ago, I believe.

Q. When?

A. Close to about three years ago, I believe.

Q. Were you present on Monday, August 5, when, around [296] 6:30 or 6 o'clock, Mr. Huddleson spoke to a group of men?

A. Yes, I was.

Q. Who told you about that meeting?

A. Mr. Torenson did.

Q. And what did he say, do you remember?

A. He said, after we came back from supper, that Mr. Huddleson wanted to speak to a group of the boys, all of them.

Q. Were you wearing your union button at that time?

A. Yes, I was.

Q. Who had given you that button?

A. Bob Anger.

Q. Now, as closely as you can recall, will you state what Mr. Huddleson said at that time?

A. His speech wasn't any too nice to be spoken, because he kind of cussed.

Trial Examiner Traynor: What did he say?

The Witness: He said he would be a son of a bitch if he would be the first one to pay the union scale out of all the canneries in the State of California; that he wasn't going to be any sucker.

Q. (By Mr. Edises) What else did he say?

A. Well, he said that before he ever did a thing like that, or pay, he would die with a wooden kimono on.

(Testimony of Ivo Rocha.)

Q. Do you remember anything else? [297]

A. I do remember that he said before he would do that he would have a contractor; that as we left one door, he would have a contractor come in the other door.

Q. What was your understanding as to his attitude toward the union?

A. Well, the way I understood it myself was that I don't believe he would care for any union at all; he didn't want to have a union there at all.

Q. Did he say that?

A. That was my attitude from the way he spoke about it.

Q. What time did you quit on Wednesday night?

A. 4:30.

Q. Was that your usual quitting time?

A. We worked about 78 hours. In the busy season we never did know when we would get through. We would go to work at seven in the morning, and get off, maybe at 4:30 or 10 o'clock at night.

Q. How did you happen to quit at 4:30 on Wednesday?

A. I don't remember that now. I don't remember whether it was because there wasn't much to do, or whether—I don't recall.

Q. Well, you knew there was to be a meeting, initiation meeting that night, didn't you?

A. Yes, I did.

Q. Who told you about that? [298]

A. Mr. Bob Anger did.

(Testimony of Ivo Rocha.)

Q. When did he tell you?

A. He told me a couple of times. He told me something about it in the morning, and in the afternoon, too.

Q. The first time he spoke do you remember what he said?

A. He told me personally that he was going to ask Mr. Torenson to let us fellows off at 4:30 that evening for the purpose of going to that meeting.

Q. Was anything else said then?

A. And then later on he came back and told me he had already asked Torenson and he said he was glad he had told him about the meeting as that gave him a chance to arrange to put other men on the labeling machine.

Q. Did you go to the meeting that night?

A. I did.

Q. Did you show up for work the next morning?

A. Yes, I did.

Q. What did you find there?

A. I found a watchman out there. I don't recall who I rode to work with, but he told us to move the car up ahead; that there was going to be trouble there.

Q. When you showed up for work the next morning—withdraw that. When you showed up at the plant the next morning did you intend to go to work?

A. Most naturally I did. [299]

Q. Did you have any knowledge before that that you would not be permitted to go to work?

(Testimony of Ivo Rocha.)

A. No, I didn't.

Q. Did you try to get in?

A. Did I try to get in?

Q. That morning, Thursday morning.

A. No, because after the watchman told me there was going to be trouble, and we wasn't going to work that morning, I thought it best to stay out and wait for the rest of the fellows to come up.

Q. Do you remember what watchman that was?

A. I believe I do.

Q. Who was it?

A. I think it was George. There are two of them by the name of George. It was a fat fellow. I will take that back. I am not sure of that. I don't want to be saying something I am not sure of it.

Q. It was one of the watchmen?

A. One of the watchmen.

Q. Did you do any picket duty?

A. Yes, I did.

Q. Did you have any conversations, or hear any conversations between any of the company officials and any of the men on the picket line?

A. I didn't get that. [300]

Q. Did you hear any of the men on the picket line talking to any of the company officials at any time?

A. No, I never.

Q. Did you commit any acts of violence on the picket line?

A. No, I never.

(Testimony of Ivo Rocha.)

Q. Did you ever threaten or intimidate, or try to intimidate any one?

A. No.

Q. Did you receive any instructions from the union in regard to violence or intimidation?

A. No, I never.

Q. Do you know personally of any instances in which any of the union men, in fact took any part in any act of violence or intimidation?

A. No.

Mr. Edises: That is all.

Cross-Examination

Q. (By Mr. St. Sure) Were there any men on the picket line except the men from Santa Cruz and the Stokely warehouses?

A. There were only Santa Cruz and Stokely men on the picket lines.

Q. No others there that you know on the picket line?

A. Not that I remember of.

Mr. Edises asked others whether or not they would accept their jobs back if offered. Would you? [301]

A. Yes, I would.

Q. Would you work in the warehouse if there were other employes there who were not members of your union?

A. Yes, I would.

Q. You would?

A. Yes.

(Testimony of Ivo Rocha.)

Q. Did you know about the contract submitted to Mr. Huddleson?

A. No, I didn't.

Q. Did you know that it contained a provision that all persons working in the warehouse would have to join the union or be discharged?

A. I don't get what you mean.

Q. Did you know that that contract contained a provision which said that all men who worked in the warehouse would have to join the union or be discharged by the management? Did you know that?

A. No.

Mr. Edises: The contract isn't in evidence and I don't know that that is the exact phraseology of it. If you want to offer it in evidence, we have it here and you can ask any questions based on it.

(Whereupon counsel Edises handed counsel St. Sure a copy of the contract referred to.)

Mr. St. Sure: I don't recall this contract. I would [302] like to check it with the one we have. Was there more than one submitted?

Mr. Edises: I don't believe there was. I believe that was the only one. I believe that your prior question, the question prior to this, Mr. St. Sure, in which you referred to a closed shop clause in the contract must have been an inadvertence on your part because I do not believe the contract contains any such provision.

Mr. St. Sure: The one I saw did. I will get that one. It might be better.

(Testimony of Ivo Rocha.)

Q. (By Mr. St. Sure) When did you first meet Mr. Woods?

A. When did I first meet Mr. Woods?

Q. Yes.

A. After we were locked out.

Trial Examiner Traynor: Speak louder.

The Witness: After we were locked out.

Q. (By Mr. St. Sure) Did you know that an agreement had been submitted to the management of the Santa Cruz Fruit Packing Company covering the requests of the union?

A. I don't remember, no.

Q. Pardon?

A. I don't recall that, no.

Q. Did you ever see a copy of any agreement that was submitted to the management of the Santa Cruz Fruit Packing Company? [303]

A. No, I never did.

Q. Were you ever present at a meeting where the terms of any such agreement were discussed?

A. I don't remember.

Q. Did you ever have explained to you, by Mr. Woods or any one else, what the terms of any contract would be that would be submitted to the Santa Cruz management?

A. I don't remember.

Q. Do you know what demands, if any, were to be made in your behalf by Mr. Woods or any one else?

A. I didn't get what you said.

(Testimony of Ivo Rocha.)

Q. Do you know what demands, if any, were to be made in your behalf for you by Mr. Woods or anybody else? Did you ever discuss or hear what demands were to be made?

A. No.

Q. To this day do you know what demands were made?

A. Afterwards I did.

Q. Pardon?

A. Afterwards I did.

Q. What did you learn afterwards?

A. What do you mean, for the betterment?

Q. What did you learn afterwards concerning any demands that were made on the management?

A. I learned that the warehouse scale was 62½ cents; I learned that. [304]

Q. Yes. Anything else?

A. And shorter hours. We wouldn't have to work 14 or 15 hours any more unless we got overtime for it.

Q. Yes. Anything else that you learned or heard discussed about any contract or proposed agreement?

A. No, I don't remember.

Mr. St. Sure: I think that is all.

Redirect Examination.

Q. (By Mr. Edises) What were you chiefly interested in? What demands were you chiefly concerned about, or what working conditions, when you joined the union?

A. Better pay for less hours.

(Testimony of Ivo Rocha.)

Q. Hours and wages, is that correct?

A. Hours and wages.

Q. You knew that the demands were going to be made in connection with hours and wages, didn't you, or did you?

A. Most naturally I—

Q. (Interrupting) Let me phrase the question differently. You joined the union because you were interested in getting better hours and wages, didn't you?

A. Yes, I did.

Q. Then didn't you know that demands were going to be made by the union on the management?

A. Well, I did know the demands were going to be made, but I didn't know when. [305]

Q. Did you know that the union was going to ask the same rates and working conditions that other union warehouses, warehousemen were getting?

A. I am not sure of that.

Q. Did you know what the union rate was?

A. Did I know what the union rate was?

Q. Yes.

A. Yes, I did.

Q. Was it your understanding that the union was going to ask the same rates for yourselves?

A. Well, not only that, but I figured it would help anyway. I wasn't sure we would get it all at the present time, but I felt we would get more than we were getting; that it would be more of a 50-50 proposition.

(Testimony of E. G. Resburg.)

Mr. Edises: That is all.

Mr. St. Sure: No other questions.

(Witness excused.)

Mr. Edises: Mr. Resburg.

E. G. RESBURG,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. Ed Resburg.

Q. Where do you live? [306]

A. 8815 D Street, Oakland.

Q. Are you married?

A. Yes.

Q. Any children?

A. No.

Q. Expecting any?

A. (Laughter) I am.

Mr. St. Sure: I cannot see the materiality of such testimony. I will stipulate that I am married and have two children; that my associate, Mr. Moore, is unmarried and has no children.

I cannot see what purpose such questions serve.

Mr. Edises: It is perfectly proper.

Mr. St. Sure: May I inquire, are you married, and have you any children?

Mr. Edises: I am married, but I haven't any children.

(Testimony of E. G. Resburg.)

Mr. St. Sure: I am, and have two children.

Mr. Kagel, are you married?

Mr. Kagel: Yes, but no children.

Mr. St. Sure: And Mr. Moore is unmarried and has no children.

I did not mean, Mr. Examiner, to inject something that might not be proper.

Q. (By Mr. Edises) Did you work for Santa Cruz or the Stokely warehouse? [307]

A. I was employed by Santa Cruz.

Q. When did you first go to work there?

A. It was in April of 1932, the first year he was in Oakland.

Q. Did you work there continuously from that time on?

A. I was there practically steady.

Q. And what sort of work did you do?

A. All of it—my main job was running an automatic sealer we had there.

Q. Were you changed around from one job to another?

A. I was.

Q. Did you do any loading?

A. Yes.

Q. When did you first hear about the union at the plant?

A. The latter part of July.

Q. Latter part of July?

A. Yes.

Q. Who told you about it?

A. Bob Anger.

(Testimony of E. G. Resburg.)

Q. Did you apply for membership in the union?

A. I did.

Q. At that time?

A. At that time, or shortly afterwards.

Q. When did you first get your union button?

A. On Monday, August 5th. [308]

Q. Were you present on Monday, around 6 o'clock, when Mr. Huddleson spoke to a group of the warehousemen?

A. I was.

Q. How did you hear about the meeting?

A. Stan Torenson told us.

Q. What did he say at the time?

A. He said Huddleson, the old man, wanted to talk to all the bunch of us out there.

Q. Were you wearing your button at the meeting?

A. I was.

Q. Now, as closely as you can recall, will you tell us what was said and done at that time?

A. Well, him and his son came out there and they were standing there talking, and he said that he understood that we had joined the union and that our demands would be 62½ cents an hour and a 40-hour week; but he said 62½ cents an hour had never been paid in the cannery and he didn't see why the hell he should start it. He also made the remark that—

Q. (Interrupting) Are you afraid of using strong language?

333

(Testimony of E. G. Resburg.)

A. No, I forgot. I didn't know how to phrase this one thing he said.

Q. Tell us what he said.

A. Well, he said he didn't see why the hell we should [309] pick on him to start with when there were 57 other canneries in the State of California; that if we organized the rest of them he would be willing to pay $1 an hour, that he didn't give a damn how much he paid so long as the rest paid it.

Q. Do you remember anything else he said?

A. Well, I asked him why he didn't start paying 62½ cents an hour, and that the others would follow.

And he said, "What the hell would I get if I paid 62½ cents an hour and the rest paid 35 and 40 cents—what a good screwing I would get."

Q. Do you remember anything further that was said by anybody?

A. Then I asked—one of the other boys asked him, or said, that he had heard he had been sent an agreement and he said—well, I don't remember his answer to that question, to that remark.

Then he asked us, said, "Why didn't you come up and talk to me?"

One of the boys said we probably would have got fired.

Then he said, "I have always treated you fellows fair, haven't I? Haven't you worked around the plant long enough to know I ain't going to bite you?"

(Testimony of E. G. Resburg.)

Q. Do you remember anything else that he said about the union?

A. Well, he told us right at the start, he said he didn't [310] have anything against the union; that he belonged to one for about fifteen years himself; and that he be damned if he would have a union in his cannery.

Q. What else?

A. That is about all I can recollect right now.

Q. Did you see Mr. Gomez around the plant prior to Wednesday, August 7?

A. I couldn't swear to it that I did.

Q. What time did you quit on Wednesday?

A. 4:30.

Q. How did you happen to do that?

A. Well, Mr. Anger told us we were going to get off at 4:30 to go to a union meeting.

Q. When did Anger tell you that?

A. He told me first about, around 10 o'clock in the morning; and I saw him talking to Stan Torenson, and as soon as I got my work—as soon as my work slacked down, I asked him what Stan said.

Q. You say you saw him standing talking to Stan Torenson?

A. Yes.

Q. Go ahead.

A. And he said, "We are going to quit at 4:30." I said, "Was it O. K. with Stan?"

And he said, "Yes, he said we could get off at 4:30."

(Testimony of E. G. Resburg.)

Then he walked around past me and he said, "Ed, we are [311] going to check out at 4:30."

And then I asked again if it was O. K. with Stan, and he said yes it was; that Stan said we could get off without any trouble.

Q. Do you remember hearing any rumor going around the plant that day that the men would be canned if they went to the meeting that night?

A. I did not.

Q. Did you go to the meeting that night?

A. Yes.

Q. Did you show up for work the next morning?

A. Yes.

Q. Did you intend to go to work?

A. I intended to go to work.

Q. You didn't intend to strike or anything, did you?

A. No.

Q. What did you find when you got there?

A. I found all the doors locked.

Q. Did you try to get in?

A. I went to one door, the door we usually go in, and it was locked. I saw the watchman and said, "How come the door is locked?"

He said, "It is orders from the front end to keep the doors locked."

Then I said, "Won't you let us park the car here?" [312]

He said, "No. The old man is going to hold a foot race here pretty soon."

(Testimony of E. G. Resburg.)

Q. Did you do picket duty?

A. I did, yes.

Q. Did you see any violence or direct action on the picket lines?

A. No.

Q. Did you get any orders or suggestions, advice or instructions from the union in that respect?

A. No.

Q. What were the union's orders, if you know, in regard to your conduct on the picket line?

A. Our orders were to go ahead with peaceful picketing and not start any violence. That was our orders to the picket men.

Q. Do you remember seeing Mr. Gomez on Tuesday or Wednesday?

A. I saw him on Wednesday.

Q. Where did you see him?

A. In the warehouse.

Q. What time?

A. I saw him first about, around 10 o'clock in the morning, and he was there all afternoon—on and off all afternoon.

Q. Did you see any one showing him around?

[313]

A. Yes.

Q. Who?

A. The assistant warehouse foreman at the time, Mr. Ledtke was one; and he was also in there with the superintendent, Joe Remington.

Q. Did you see any Chinese around?

A. I did.

(Testimony of E. G. Resburg.)

Q. What time did you see them?

A. It was around, I imagine, 3 o'clock in the afternoon.

Q. Who were they with?

A. Gomez.

Trial Examiner Traynor: We will recess until 2 o'clock.

Mr. Edises: That is all with this witness.

Mr. St. Sure: No questions.

(Witness excused.)

Mr. St. Sure: Before recess may I at this time formally move an adjournment until Thursday, January 2, 1936.

My reason for the motion, in the first place, is that it happens that this is the day before Christmas and some of us, perhaps all of us, would like to take advantage of this time in preparation for the holidays and to be with our families. I, for one, would like to have that time.

My reason for suggesting that we continue the matter during the holiday period, until the first business day [314] after the first of the New Year, is that aside from personal reasons, which do exist, the holiday period, so far as our courts are concerned, courts are adjourned except for matters of the greatest urgency and requiring immediate action.

I feel that all of us, if it is possible and if no hardship will come to any one by the continuance, feel that the continuance would be desirable.

I simply desire to point out that the complaint in this case was filed originally on the 2d of November, after having been before the Board for some period of time before that time. It was originally set down for hearing on the 9th of November. We requested at that time an extension of the five day period within which to file our answer, and it was denied us. Our answer was filed and we were prepared to go through with the hearing on the date set, the 9th of November, and there was no question asked concerning whether that suited the convenience of counsel or witnesses, or any one else.

We were advised by letter—in fact, I believe our client was advised by letter—that an amended complaint was being filed and that the matter would be continued until the—I want to get these dates right. It was first set for the 18th of November, and then continued, at the instance of the Board, to the 9th of December. We were prepared to proceed at that time, and Mr. Wagenet, the Regional Director, called me on the telephone and said, "We are not going on on [315] the 9th. It will go over two weeks."

And it was thereupon continued to this date. I don't mean to suggest or mislead any one in connection with what Mr. Wagenet said to me, but he said over the telephone—I understand the gentleman is in Washington and is no longer the Regional Director of the Board—"perhaps it won't go on at that time," because I called his attention

to the fact that that would be immediately before the Christmas holiday and would leave us on Christmas Eve trying this matter.

On Friday of last week I called the Regional Labor Board and talked to Mrs. Rossiter and I said, "Are you going on on Monday?"

She said, "Of course we are going on on Monday."

That was the beginning and end of the conversation in that connection.

There are matters which were set, as far as my own calendar is concerned, earlier than this. I had a Pension Board hearing set for Friday, December 27, involving the right of two widows of a policeman and a fireman, to obtain pensions. At their willingness, and at my request, and with the consent of the officials of the city, those matters were set over, although they did involve the actual payment of money to these people at a period when perhaps they are in need of it.

My thought is this: That if we do continue the hearing [316] on these days that there are only four days possibly in the interim that would be lost; the day after Christmas, the 27th, which is Friday, and the Monday and Tuesday immediately preceding New Year's Day.

Now, if it is the desire of counsel and the Examiner that we do go through and work on Christmas Eve and the afternoon preceding Christmas, and that we turn over those four business days and work also on the evening before New Year's, be-

fore that holiday, I assume there is nothing that we can do but acquiesce, or stay away from the proceeding, which I prefer not to do.

We have made certain offers to stipulate here, which I will renew, and which I think will materially shorten the proceedings. I have in mind particularly the matter of the quantities and the percentages of shipments, and so on, the places to which they were consigned, and the places where the purchasers received them.

In so far as the examination of the factual witnesses we have heard so far, I think the cross examination has perhaps been briefer than was anticipated. As far as I am concerned, the major portion of this material, which comes in upon the same basis, is cumulative, and I am not going to cross examine witnesses who are testifying, as these men are, to the same facts which have previously been testified to by others, except in so far as there is a difference in [317] the testimony that we would like to examine into.

I do not feel that the entire matter which, I heard estimated, would require some two weeks to hear, even with the continuance, will take the full two weeks to hear. I think we should be able to conclude the matter in one or two days following that adjournment.

I have given all of these reasons, none of which I take it are basic grounds for a continuance, and I will state frankly that my reason for the request, primarily, is personal. But I do feel that we would —even though the Board does object to the matter being continued at this time—appreciate a break,

and if we could have a break perhaps it would facilitate the matter, because during the interval I can undertake to have figures prepared. They haven't been prepared. And even should we work through, they will be available, I take it, no sooner than if we didn't have the continuance. I do not make that as a threat that we will withhold them, but I will get them as quickly as I can. I just do not feel that anything will be accomplished by going through over the holiday period that would compensate for the personal inconvenience to all of us, including witnesses, counsel, and every one else.

Unless there is some matter of major importance which would indicate the matter must be determined at the earliest possible moment I urge that the matter go over. [318]

I will say further that I do not feel that the Board, in saying it opposes a continuance at this time, is in a very good position to take that arbitrary stand, because they have previously twice continued the matter over a period of more than a month without consulting or even requesting a consultation concerning the convenience of any others.

I move that we go over until the 2d of January.

Mr. Edises: I want to state that I do not feel that Mr. St. Sure's request for an adjournment at this time is, in essence, unreasonable. I am aware of the fact that this is the holiday season in the courts, and if this were an ordinary civil case, there would hardly be any question as to an adjournment.

It is hardly necessary for me to state, of course, that this is not an ordinary civil case. And while I do not propose at this time to enter into an explanation of the former postponements, nor to assign blame in regard to them, but the fact does remain that the acts that we are here concerned with, this lockout, as we have termed it—and the walkout, as the Respondent maintains—did occur as far back as August, and that quite apart from the matter of who is responsible for the fact that it has not come to hearing until now, it is true that these men have been out of their jobs since that time, and we ought to do everything reasonably necessary to expedite it.

[319]

I wired the Board in Washington and indicated that counsel for the Respondent desired a postponement at this time, and I have just received the following reply:

"Retel Board opposed adjournment Santa Cruz Wednesday through New Year (stop) large questions of policy and program involved this particular case which make completion administrative hearing more important.

(Signed) National Labor Relations Board."

I do want to state, however, that my expectations in regard to this case, at least certain aspects of it, have not materialized. We have gone much more rapidly than I had anticipated. The objections have been relatively few, and we have made considerable progress. I would be willing to state that we are several days ahead of where I expected that we would be, basing my opinion on my experience with the case just prior to this one.

Trial Examiner Traynor: I think we are probably several days ahead in this case over what the Board has anticipated.

Mr. Edises: That is probably so. In other words, the Board, which was daily receiving the transcript of the Mackay Radio and Telegraph Company case, had before it a record which was replete with the objections of all kinds and questions as to the admissibility of evidence, indicating an effort on the part of counsel to confine the matter to strict technical rules of evidence and to build up a record. That [320] hasn't happened in this case, and we have made progress.

The matter of policy of course still remains.

I presume that the Trial Examiner would have power to grant such a request, but before doing so I would like to have an opportunity to speak to the men, and to their union representatives, and see what their feeling is in the matter.

I suggest that we postpone the decision in this matter until this afternoon's session.

Trial Examiner Traynor: I think Mr. St. Sure's motion is that we adjourn now and not come back.

Mr. St. Sure: Yes.

Trial Examiner Traynor: Do you see any necessity for all this going into the record?

Mr. Edises: Yes, let it go in.

Mr. St. Sure: I do not object to it.

Mr. Edises: I see no objection.

Mr. St. Sure: The reason that I suggested that we adjourn now, is because it has become the custom, whether good, bad or indifferent, for the pro-

fessional offices on this side of the Bay to shut down at noon on the day preceding Christmas. My own offices are going to be closed, and the people will go home and about their affairs. I would like to do the same thing. That is the reason I suggested closing now.

If you desire that we come back here at 2 o'clock and [321] consider the matter at that time, why of course I will have to be here at that time.

Mr. Kagel: I can speak for the union. So far as the union is concerned, we voice objection to any postponement of the matter. This situation is very serious to this particular union, also serious to other unions in this particular region, that may become involved under this particular Act.

The matter goes back to August 7th of this year, and we are now approaching the New Year and we are just beginning to make progress in this hearing.

I realize that the decision is in the hands of the Examiner, but so far as the union is concerned, speaking officially as their representative in this particular matter, we desire the record to show that we are opposed to any postponement.

Trial Examiner Traynor: Anything further?

Mr. Edises: I have nothing further to add, Mr. Examiner. I do believe that the rules and regulations do set forth your powers in this respect.

Mr. St. Sure: Yes, under Section 29 of the Rules:

"In the discretion of the Trial Examiner, the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the Trial Examiner, or by other appropriate notice." [322]

I think the power does exist.

Trial Examiner Traynor: This is a very difficult decision to make, because it would be a personal inconvenience to me to hold the hearing during this period, and yet in view of the telegram from the National Board, stating its views as to the urgency and importance of the matter, and weighing them against personal reasons of counsel, and my own, I am of the opinion we must continue the hearing through the holidays, with the exception of Christmas and possibly Friday and Saturday.

I regret having to make that decision.

We will recess until 2 o'clock this afternoon.

(Thereupon, at 12:15 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

After Recess

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Traynor: Are you ready to proceed?

Mr. St. Sure: Yes. I have no questions of the last witness.

Mr. Edises: Mr. Woods.

E. C. WOODS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name? [323]

A. E. C. Woods.

Q. And your address?

A. 2535 Humboldt, Oakland.

Q. Calling your attention to the summer of 1935, specifically the months of July and August, were you at that time connected in any official capacity with the Weighers, Warehousemen and Cereal Workers Local 38-44, I. L. A.?

A. I was.

Q. What was your capacity?

A. I was business agent, acting as president.

Q. What was the nature of your duties and authority, and so on, as business agent?

A. My duties as a business agent for the Local was to carry out instructions from the Local, to negotiate as the Local seen fit for me to do.

Q. Can you enlarge on your duties in connection with these negotiations that you refer to?

A. Well, my duties were to negotiate agreements with the employer. Of course those agreements had to be taken back to the union for ratification.

Q. Will you explain the process of ratification of an agreement, just how it was done, what was required?

(Testimony of E. C. Woods.)

A. When an agreement was reached between the business agent, the best that he could do, it was taken back to the union, either at a special meeting or a regular meeting, and they [324] voted on that agreement to see whether they would accept it or not.

Q. Did you, or any other official of the union, have power to enter into a binding agreement without such a vote of the men?

A. No sir.

Q. Prior to the recent lockout in this case, had the union organized any other cannery warehouses around the Bay region?

A. Yes sir.

Q. Which ones?

A. Rosenberg.

Q. Where is that?

A. It is at 14th Street; they call it the 14th Street Terminal.

Q. Is that in Oakland?

A. Yes sir.

Q. Any others?

A. Libby, McNeil and Libby.

Q. Where is that?

A. Same place; just across the street. They are just across the street from one another.

Q. Any others?

A. Del Monte.

Q. Is that the California Packing Company?

A. That is the California Packing Company, yes.

[325]

(Testimony of E. C. Woods.)

Q. And where is that located?

A. That is at Encinal Terminal, the best that I can describe it.

Q. Alameda?

A. Isn't it Richmond—right across the Bay here?

Q. Alameda.

A. Yes.

Q. Do you know what wage scale Rosenberg pays the cannery warehousemen?

A. 72½ cents an hour.

Q. Do you know whether the work which is done by the cannery warehousemen at Rosenberg's is the same in substance as the work done at the Santa Cruz and Stokely warehouses?

A. It is trucking, and I would say it would be the same.

Q. What is the wage scale at Libby's?

A. 72½ cents an hour.

Q. By the way, what percentage of the warehousemen at Rosenberg's are organized, belong to the union?

A. All of them.

Q. 100 per cent?

A. Yes sir.

Q. How about at Libby's?

A. Same thing.

Q. How about Del Monte, what percentage of the men there belong to the union? [326]

A. I would say 40.

(Testimony of E. C. Woods.)

Q. 40 per cent?

A. Yes—50 per cent, something like that.

Q. What is the position of Local 38-44 with reference to the Pacific Coast District of the I. L. A., particularly with reference to your powers of independent action?

A. Any local has its own right to take—I suppose you are speaking of strike action, aren't you, or individual action?

Q. Let me put it specifically: In the first place, do the officers of Local 38-44 have power to call the men out on strike without a vote of the men?

A. They do—to call them out without a vote of the men?

Q. Yes, without a vote of the men.

A. No, not without a vote of the men.

Q. Is it necessary to get the consent or permission of the Pacific District, or the International of I. L. A. before 38-44 can vote to go out on strike?

A. No sir, it isn't. We don't have to get permission. The only time that you get permission from the District is when you expect their assistance.

Q. And what do you mean by that?

A. In other words, for them to back you up in whatever action you take.

Q. If, for example, you were going to call a strike [327] confined exclusively to one warehouse, say the Santa Cruz plant, would it ordinarily be necessary to get the permission of the District or the International?

A. It would not.

(Testimony of E. C. Woods.)

Q. Would you ordinarily, when you are striking in one plant, get their consent or permission?

A. No sir.

Q. What was the first connection you had as business agent of 38-44 with the organization of the Santa Cruz warehouse, or Stokely?

A. Do you mean the first time I was approached on it?

Q. The first time you had anything to do with it.

A. Well, I don't recall the first date.

Q. Approximately.

A. I would say that it was somewhere near the 15th, somewhere after the 15th, the 15th or after anyway, of July.

Q. 1935?

A. Of 1935. I was at the hall on 7th and Market, here in Oakland at noon. I remember very distinctly that it was at noon. I was approached by Bob Anger. He asked me if Local 38-44 would accept that warehouse, from the Santa Cruz Fruit Packing Company, into the Local.

I told him that they would accept them, providing that the men came in 100 per cent and paid up their initiation fees before they were initiated. [328]

Q. Did you then give him application blanks?

A. No, I did not.

Q. What was the next step in the organization?

A. I told him to go back and find out how many wanted to go into the union. He did so, and within the next few days—I don't recall just when—I gave him the application blanks to fill out.

(Testimony of E. C. Woods.)

Q. Now, of the year-round employes at the Santa Cruz and Stokely warehouses, how many of those men signed up, or indicated their intention to join the union?

A. Every one of them.

Q. Prior to the lockout?

A. Yes.

Q. Did you have any discussion—by the way, did you have your dealings with Mr. Anger as representative of the men, or who did you deal with?

A. Mr. Anger.

Q. Anybody else?

A. No sir.

Q. Chiefly Mr. Anger?

A. Mr. Anger.

Q. Did you and Mr. Anger ever talk over a proposed agreement, or proposed demands?

A. We have, if I may explain it in this way, an agreement already signed up with the other warehouses. [329]

Q. The ones you mentioned?

A. The Haslett Warehouses—and the agreement we have already signed up, I had taken Mr. Anger one of those agreements that we had already signed up with the warehouses here in Oakland and San Francisco, which was calling for 62½ cents an hour. That is the only thing.

Q. You say—pardon me; I didn't mean to interrupt you.

A. I had taken him this agreement and told him to look it over. I gave it to him at their plant one day at noon.

(Testimony of E. C. Woods.)

Q. Do you remember about when that was?

A. No, I do not.

Q. Did the men at any meeting, or Mr. Anger and yourself, ever discuss striking at the Santa Cruz or Stokely plants?

A. No sir.

Q. The subject of a strike never came up in connection with that organization?

A. It did not.

Q. When did you first have any contact with any company officials?

A. I recall it was on Tuesday, the 6th.

Q. What was the nature of that contact?

A. I went to the plant at noon to see how things were going along. The boys informed me that Mr. Huddleson had informed them on Monday that they could either go with him or the union, or something similar to that; that he didn't [330] want no union activities, or something like that, in his plant.

I don't recall just what they told me, but it was something to that effect.

I went in to see Mr. Huddleson, and Mr. Huddleson informed me of the same thing: That they didn't want nothing to do with the union, or any of its officials.

Q. And can you relate, as closely as you can remember, the actual discussion that you had at that time with Mr. Huddleson? You entered his office, and then what was said?

A. I went in——

(Testimony of E. C. Woods.)

Q. (Interrupting) By the way, what did you go to see him about?

A. I went in to see him in regard to what he had told the men on Monday night; that it seemed that he had informed them that they was to either go with the union or go with him.

Q. Well, you went in to the office. Tell us just exactly what happened, as closely as you can remember, just what was said.

A. I went into the office and I asked the girl there at the desk if I could see Mr. Huddleson. So I had to wait around there a few minutes, and he came in and I went into his private office there with him.

I asked him if it was true, that is, that the men [331] would have to give up the union if they stayed in the plant.

And he said, "Well, what do you think?"

And I said, "I don't know. I came in to find out. I don't want these men to lose their jobs."

So he told me, informed me, that he could not have and would not have any union activities around his place; that it would cost him too much money; that although he had been a union man, he said that canneries was no place for a union; that you couldn't have a union in a cannery; that the hours wouldn't permit it, and the wages wouldn't permit it. Therefore he didn't want any union in his plant; that if we wanted to organize we could go some place else and organize.

(Testimony of E. C. Woods.)

Q. Was anything said about contracting the work out?

A. He told me that if we were going to come in there and organize, that he was going to let it out on contract. I asked him if he would give me the name of the one he was going to contract it out to, give me the name of the contractor, and he said I would find that out soon enough.

Q. What did you want the name of the contractor for?

A. I wanted the name of the contractor so that if he was going to contract it out, that I could go and talk to the contractor and see if I couldn't make arrangements with the contractor for the men.

Q. Well, was anything further said that you can now remember? [332]

A. Yes. I think that he said that he was very busy and as far as I was only there on union activities, or union business, that so long as he didn't want to have nothing to do with the union, he didn't see that he had any more business with me and I had better go along and peddle my papers.

Q. Did you do that?

A. I did.

Q. Now, did you have any further contact with any company official prior to the time of the lockout?

A. Before the lockout?

Q. Before the lockout, yes.

A. No, I did not.

(Testimony of E. C. Woods.)

Q. Did you attend the initiation meeting Wednesday night?

A. I did.

Q. And what was—did you have any discussions with any of the men in regard to their having gotten off from work?

A. Well, I went to 7th and Market, to the hall there. I got there a little early, and quite a few of the men were around there on the street waiting for me to come. When I got there they all seemed to be very happy and very cheerful, and they told me that they had gotten permission from the boss to come down to the meeting that night, and that the boss knew about it, and that the night men were supposed to go back to work as soon as the meeting was over; and that [333] they would like to get the meeting over as soon as possible so they wouldn't delay any, or cause him to lose any time.

I said, "Well, it is all right then for the men to come off this afternoon?"

And they said, "Yes," that everything was fine; that they had permission to come off that afternoon to come to the meeting, and that they were to go back to work the next morning.

Q. What time was the meeting over that night?

A. I would say 9:30 or quarter to ten.

Q. Now, did you go to the Santa Cruz plant—strike that. When did you first hear that the men had not been permitted to return to work?

A. Well, the next morning I got to the office rather early and——

(Testimony of E. C. Woods.)

Q. (Interrupting) Which office?

A. The office in San Francisco, 85 Clay Street—and there was a telephone call there for me to come to the Santa Cruz plant just as quick as I could. So I didn't take any pains for anything else, but I jumped in the car and rushed over here as soon as I could.

When I got over here, why all the men was out in the street, and they told me that they had been locked out.

Q. Do you remember what time you got here?

A. Must have been around 8:30; not later than 9 o'clock. [334]

Q. Now go ahead.

A. And so I said, "Well, did something happen? What happened?"

And they said they didn't know, only that some of the men, some of the night men came and they wouldn't let them in, and that when the men came the next morning, they wouldn't let them in.

I said, "Who is working in there?"

They said they had seen some negroes and some Chinamen.

So I said: "Well, I will go up and see Mr. Huddleson."

And so I started down there and I was stopped.

Q. Where did you go?

A. I started down to the plant. I was stopped by a guard. I explained to the guard who I was, and so he let me through. I tried all the doors and

(Testimony of E. C. Woods.)

knocked on the doors, and nobobdy wouldn't answer them, and that was all the way down.

So I went to the extreme end of the plant. There is a cafeteria there. I couldn't even get in the office, so I went to the cafeteria. I told the guard there on the door—one of the pickets had explained to me that Manuel Gomez had contracted it before —and so I wanted to see Mr. Huddelson.

They informed me that Mr. Huddleson wasn't in. So I asked the guard then if I could see Mr. Manuel Gomez, and he said, "Yes."

He, the guard, seemed to be rather green on his job, [335] because he had taken me down through the plant. I went all the way through the plant, all the way through the warehouse, plumb on to the other end of the warehouse, and there we found Manuel Gomez.

And so I asked Manuel why that he was leaving our men out on the street. I said, "These men have been working here." I said, "What is the trouble that you are leaving them out on the street?"

He said, "Because they belong to the union." He said he didn't want to have anything to do with any of that mess; that he had seen enough of it already and he wasn't going to have any messes up around where he was; and that the union, if they wanted to organize, they could go somewhere else.

Q. Did you see any of his men around?

A. The warehouse had plenty of men in it. He said he had his own crew, and that he had brought them there with him; that he knew that this was going on for some time.

(Testimony of E. C. Woods.)

Q. Well, what did you do then?

A. Well, I tried to explain to him that it would be more valuable for him to put the men back that was experienced in the plant there.

Then some large, kind of a fat fellow—I suppose he would weigh around 300 pounds—he came up to me and he had a gas gun and explained it was a gas gun. The way it looked, it had a barrel like a one-pounder, like a sawed off shot gun. [336] He had that kind of under his arm, and he had a billy club in his hip pocket. And another man came up from behind me and he said something. I knew there was somebody behind me. And this guard that brought me down, he was there with me also.

The big fat fellow, I don't know what his name was, he told me if I wanted to walk out, I had better get going; otherwise they would carry me out.

Q. Did you follow his suggestion and walk out?

A. Very fast, yes.

Q. Did you make any subsequent efforts to see Mr. Huddleson?

A. After that?

Q. Yes.

A. I did.

Q. And when was that?

A. Well, it was—I don't recall just the date—it was the next couple of days after that. I thought that there might be some misunderstanding in the proposed agreement that he had received. I went in to see Mr. Huddleson.

(Testimony of E. C. Woods.)

I found Mr. Huddleson out in the street sitting on the running board of a car. I had asked Bob Anger to go in with me. Bob went in with me.

We found Mr. Huddleson sitting on the running board of a car. I asked Mr. Huddleson if there hadn't been something in that proposed agreement that he didn't understand. [337]

He said he understood it very thoroughly.

Then I told him that that was only a proposed agreement and that he could send us a revised proposal back and we would be glad to have it.

Q. Do you mean a counter-proposal?

A. A counter-proposal, I mean. And he said he wasn't interested in any proposals, or any of us; that the only time that he had anything to do with the union was when he didn't have his shoes on and when he didn't have his shoes on, he would be dead.

Q. Well, what did you do then? Was there anything further said?

A. There was nothing further to do but go away.

Q. Did you have any further interviews with Mr. Huddleson, or any official of the company, around that time?

A. I did.

Q. When was that?

A. Two or three days later. The business agent from the teamsters—I was thinking it over and I thought Mr. Huddleson might be hot and sore at the time—and so the business agent and myself went in to see him.

(Testimony of E. C. Woods.)

Q. Who was this business agent of the teamsters?

A. I don't recall his name now.

Q. Mr. Jackson?

A. Mr. Jackson, that is it. And we went in to see Mr. [338] Huddleson. He thought that maybe he could do something about it. We went in to see him and we found him practically in the same place, on the running board of a car, where I had seen him previously.

We asked him if there couldn't be some way that we could get the men back to work and negotiate the thing later.

He said, "What do you mean by negotiate?" He said, "If I would take those men back in," he said, "you would turn right around and I would have the same trouble over again, only I would have them in there and I would have to replace them again with other men." He said, "Now, I don't want nothing to do with the union. I have told you that. Now get out of here and leave me alone and tell them little playmates of yours out on the street, they had better get to hell away from my plant and stay away."

Q. Who were the playmates?

A. Meaning the pickets, the men that he had had under his employ.

Q. What did you do then?

A. I took his advice and went back.

Q. Did you have any further interviews with him?

(Testimony of E. C. Woods.)

A. Later on I thought maybe that it might be some good if I would take some one else.

Q. What were you trying to do in your repeated interviews with Mr. Huddleson, what were you trying to accomplish? [339]

A. The main thing was to use a friendly attitude, as we had always used with any company, to get the men back in, and try to negotiate some kind of an agreement for them.

Q. All right. Now tell us about this next interview. About when was it, can you estimate approximately when?

A. Well, he has a record of that and I think we have, too.

Q. Who was present at the next interview?

A. Mr. Harry Bridges, myself, and the same teamster delegate that was with me before.

Q. Mr. Bridges is president of Local 38-79?

A. He is.

Q. San Francisco Stevedores?

A. That is right.

Q. Have they any authority as to the affairs of your Local?

A. No sir.

Q. Mr. Bridges was along for what reason?

A. He was along—I was trying every way possible to get somebody that could reason with Mr. Huddleson. He didn't seem to be a man that I could reason with, and I was trying to get somebody, anybody that I could get, to reason with him.

Q. The stevedores had, at that time, declared the Santa Cruz cargo hot, had they not?

(Testimony of E. C. Woods.)

A. Yes sir.

Q. All right. Now tell us about this interview. Just a [340] minute. Who had it declared hot cargo, the stevedores, or 38-44?

A. 38-44.

Mr. Edises: I believe there exists a typewritten transcript of that interview. I am not sure in my own mind that it is necessary to introduce it in evidence, but it would be the best evidence.

Mr. St. Sure: You have a copy of it. Put it in evidence. I haven't a copy here. You have a copy. I will state that this copy of the transcript (indicating) of the conversation, was furnished through the Regional Labor Board by the Respondent. I have no objection to it begin introduced, reserving, as always, the objection to the jurisdiction and materiality, and other objections concerning the introduction of the evidence itself; but so far as questioning the foundation, we make no objection on that point.

Mr. Edises: Would it be stipulated that this is a stenographic transcript of the interview between Mr. Bridges, Mr. Woods, Mr. Huddleson on or about—

Do you know the date of that?

The Witness: I do not.

Mr. Edises: Do you know, Mr. St. Sure?

Mr. St. Sure: No, I do not.

Mr. Edises: Shortly after the lockout. I offer this in evidence as Board's Exhibit No. 2. [341]

Trial Examiner Traynor: Did you see it, Mr. St. Sure?

(Testimony of E. C. Woods.)

Mr. St. Sure: Yes, we furnished it to them.

Trial Examiner Traynor: It will be admitted as Board's Exhibit No. 2.

(The document referred to was received in evidence and marked Board's Exhibit No. 2, Witness Woods.)

Q. (By Mr. Edises) After the interview by Mr. Bridges and yourself with Mr. Huddleson, did you have any further dealings with Mr. Huddleson?

A. No sir.

Q. I show you a document headed "Agreement," and the preamble of which reads:

BOARD'S EXHIBIT No. 3.

"This Agreement, made and entered into this .....day of August, 1935, by and between Santa Cruz Packing Company and Stokely Bros. Inc., parties of the first part; and Weighers, Warehousemen & Cereal Workers' Local 38-44, I. L. A., party of the second part, Witnesseth —" and ask you if you can identify that?

A. (Examining document) That is a copy of the proposed agreement that we sent to Mr. Huddleson.

Q. Will you look over that agreement and state whether its terms are exactly the same as the proposed agreement sent Mr. Huddleson?

A. I see no changes.

Q. It is the same agreement, is not not? [342]

A. It is.

Mr. Edises: We offer that in evidence as Board's Exhibit No. 3.

(Testimony of E. C. Woods.)

Trial Examiner Traynor: Admitted as Board's Exhibit No. 3.

(The document referred to was received in evidence and marked Board's Exhibit No. 3, Witness Woods.)

Q. (By Mr. Edises) I show you a copy of what purports to be a letter of transmittal of a proposed contract, and ask you if that is the letter of transmittal that was sent along with the proposed agreement, to Mr. Huddleson?

A. (Examining letter) That is the letter that accompanied the agreement.

Mr. Edises: We offer that in evidence, and ask that it be made a part of Board's Exhibit No. 3.

Trial Examiner Traynor: That will be a part of Board's Exhibit No. 3.

Mr. Edises: On second thought, I think this letter of transmittal had better be Board's Exhibit No. 4.

Trial Examiner Traynor: All right. We will call it Board's Exhibit No. 4.

(The letter of transmittal referred to was received in evidence and marked Board's Exhibit No. 4, Witness Woods.) [343]

Q. (By Mr. Edises) I show you a carbon copy of a letter headed, "38-44, 85 Clay St., San Francisco, Calif., August 10, '35," addressed to "Santa Cruz Fruit Packing Company, 1175-57th Ave., Oakland, Calif., attention E. E. Huddleson," and with the name of E. C. Woods, Business Agent, typewritten at the end, and ask if that is a true and correct carbon copy of the letter sent by you?

A. (Examining copy of letter) It is.

(Testimony of E. C. Woods.)

Q. And I show you a document headed, "August 10, 1935," and reading: "The undersigned has received a letter addressed to San Cruz Fruit Packing Company, 1175-57th Ave., Oakland, Calif.," and signed "R. A. Williams," and ask if you can identify that?

A. (Examining document) Yes sir, that was delivered by a messenger boy, and that is the signature of the deliverer and the one who accepted it.

Q. Is that the receipt for the letter dated August 10, 1935?

A. That is right.

Mr. Edises: I offer these two papers in evidence as Board's Exhibit No. 5.

Have you any objection, Mr. St. Sure?

Mr. St. Sure: The same objection, as to its materiality and relevancy in this proceeding, the jurisdiction, and so forth; as to the foundation, no, I have no objection to it [344] upon that ground.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 5.

(The two documents referred to were received in evidence and marked Board's Exhibit No. 5, Witness Woods.)

Q. (By Mr. Edises) Showing you Board's Exhibit No. 3, how was that agreement prepared?

A. You mean how did we prepare it?

Q. How did you go about preparing it?

A. This agreement was taken from an agreement that we have already made and signed.

(Testimony of E. C. Woods.)

Q. With other warehouses?

A. With other warehouses.

Q. In the Bay region?

A. Yes. For instance, with Haslett, because Haslett happens to be the chairman of all the warehouses and Haslett signed the agreement for the warehouses. We had taken the Haslett Warehouse agreement, as we call it, and taken this agreement and sent it to them.

Q. And the terms and condition and demands contained in this agreement are the same as those contained in your own agreement with warehouses around the Bay Region?

A. They are.

Mr. Edises: No further questions.

Mr. St. Sure: Before beginning my cross examination, [345] may this exhibit, Board's Exhibit No. 2, the transcript of this conversation, be deemed to have been entered in the record so we may refer to it without reading the entire transcript in at this time; that is, may it be considered as having been read, and copied into the record?

Trial Examiner Traynor: Yes.

Mr. St. Sure: I would like to refer to it without the necessity of going through the entire document.

Trial Examiner Traynor: It is so considered, and I will ask the reporter to incorporate it in the record at this point.

Mr. Edises: And if you intend to cross examine him in regard to matters contained in there, the witness will be given an opportunity to refer to it?

Mr. St. Sure: Surely.

(Testimony of E. C. Woods.)

BOARD'S EXHIBIT No. 2

is in the words and figures following, to-wit:

"Bridges: I guess we may as well get started.

"Woods: We came in here to find out if we couldn't see you this morning and see if we couldn't do something. We asked you at the Labor Relations Meeting about putting these men back to work and I thought you might have given it some consideration [346]

"E. E. Huddleson: I told you that we had no particular grievance with most of these boys out here, but some of these fellows conducted themselves in such a manner after they were out that I won't have them working for us.

"Woods: Yes, I know it.

"E. E. Huddleson: We have a Contract with this boy out here in the Warehouse and we aren't in a position to take it away from him. My thoughts are that you went about this whole thing in the wrong way.

"Woods: We didn't have any time to go about it at all. In fact, we had two days from the time we organized to the time we were locked out.

"E. E. Huddleson: There is still a question about this Lockout business.

"Bridges: It was a pure and simple lockout.

"E. E. Huddleson: That may be your interpretation of it, but that isn't mine. They said nothing about it and went, and there was only one thing for

(Testimony of E. C. Woods.)

me to do and I did it. I know what actually happened in regard to this supposed lockout story.

"Bridges: Nevertheless, they were locked out. Is it your [347] position that the Union men won't be allowed to work with you?

"E. E. Huddleson: It is my position that some of them won't come back.

"Bridges: We are going to have to find out what your position is.

"E. E. Huddleson: I am not in a position to put them back. I have a man under Contract who brought his own men in here. I have nothing against these fellows except those that conducted themselves in a very disorderly manner. While they were not working for us, some of them were raising hell about four o'clock in the morning.

"Bridges: Of course, we don't agree, however, we will let that go. Naturally, we are in this position—the Plant was organized and they were asked to join the Union. The notice was served on them that if they joined the Union they would be locked out.

"E. E. Huddleson: That is not so—who said they had any such notice served on them and who was supposed to have served it.

"Bridges: Well, I guess it wasn't in writing, but nevertheless, they were locked out.

"Woods: Several men came to me and they all told me the same [348] thing; that you came into the Plant and told them that if they wanted to work with you they could work with you, and that you would give them two days to make up their minds.

(Testimony of E. C. Woods.)

"E. E. Huddleson: The boys showed up with Union Buttons on and I went out to find out what it was all about. Nobody had said a word. I asked each one individually what it was all about, and finally I got a tall fellow that worked on the sealing machine to talk and he told me that they figured that they wanted to better their conditions and the Union had told them they could better their positions by joining the Union, and they told me about the conditions—62½¢ an hour, 48 hours a week, and double time for overtime, and the rest of the story. You can't expect me or anyone individual to pay considerable more than anybody else in the industry. That is ridiculous on the face of it. As far as bettering their conditions is concerned, I don't blame them, but you should know that we are not going to pay any more than the rest of the Industry is paying. I told them to go home and talk it over with their families and then tell me their decision. Nobody came back—I had to go to them. [349]

"Bridges: Were any official demands made on you?

"E. E. Huddleson: They told me they were going to get 62½¢ an hour.

"Bridges: As far as the Union is concerned, have they asked you for any change in conditions at all, or a raise in wages?

"E. E. Huddleson: Yes, I got that Agreement from the Union.

"Woods: You were to consider the Agreement. We didn't say you were bound to this Agreement.

(Testimony of E. C. Woods.)

"Woods: This agreement was sent in on Tuesday afternoon and they were locked out on Wednesday.

"Bridges: The only demand is that the men be reinstated without any discrimination and the Union representative be allowed to work out some agreement—it might be 62½¢ an hour and it might not be.

"E. E. Huddleson: We do our work in Santa Crúz under Contract just as several other Canners do. We contract all of our stacking here as well as trucking from the cooling porch to the stacks. 90% of the Canners in California contract their stacking. A good Can Stacker can stack four or times as much as our ordinary workman. We contract all of our Warehouse work at so much per case—taking down from the stacks, [350] loading and labeling up. I have had half a dozen men who asked me to contract the Warehouse. The Pacific Coast Canners decided not to operate this year and the Superintendent down there, who had been working for them for 10 years, was asking me if he couldn't contract the Warehouse, so this night I told the boys I had a chance to contract this Warehouse for a little less than it is costing me now, and that I couldn't afford to pay any more than anybody else. So, I told them to go back and talk it over with their families and they never did come back. That night they were supposed to work at 6 o'clock, and they left. The ones that were supposed to work from 6 p. m. to 2 a. m. said they would only work from 6 to 8—that

(Testimony of E. C. Woods.)

they were to go to a meeting at 8 o'clock, so I told them they were either going to work their full shift or not work at all. We told them that and then they left, so I immediately called this chap and made a contract with him and he got his crew that used to work for him and he put them to work.

"Bridges: Well, our job is to get the men back on the job; to try to have the men belong to the Union and work at the same time.

"E. E. Huddleson: I have no objection to them joining the Union. [351]

"Bridges: Except that you won't have them working for you.

"E. E. Huddleson: That isn't so—I carried a Union Card myself for fifteen years. I have no objection to anyone belonging to the Union. The only thing is that you can't ask anybody in any Industry to pay more money and work under different conditions than the rest of the people in the same industry—that is wrong.

"Bridges: That hasn't been done. At present the Union is making no demands along that line. The representative of the Union and the men are not asking you for a raise in wages or to shorten the hours—there is no demand at all—except the right of the men to belong to the Union, and they have that right.

"E. E. Huddleson: I have no objection to their belonging to the Union.

"Bridges: But you won't reinstate these men on the job?

(Testimony of E. C. Woods.)

"E. E. Huddleson: I am not in a position to do this. I have a Contract with a man to do the work and he has his own labor here.

"Bridges: Then there is nothing wrong with these men except that they joined the Union?

We are in this position—we believe our demands are reasonable, and I believe the whole Labor League [352] believes that, and it is up to us to see if we can't get the men back to work and still belong to the Union. We have gotten together on it and thought we would talk to you so that it wouldn't go too far and extend as far as it might. It can extend a long way, and we are just trying to avoid it.

"E. E. Huddleson: Why did you send that Contract out here if you didn't expect to make it stick?

"Bridges: We will withdraw it.

"Woods: It was a proposal—it states so in the letter.

"E. E. Huddleson: I can't take a Contract away from a man who has it and throw him out of the place—you can appreciate that.

"Bridges: You threw the other men out.

"E. E. Huddleson: They left their work and walked out—they were not locked out.

"Bridges: Did the men who took their places understand the conditions under which they were working under this Contract?

"Woods: You wouldn't tell me the man's name? You told me sometime ago that if we were figuring on organizing this place and if we went in there

(Testimony of E. C. Woods.)

with any demands, [353] that you were going to let the job out under Contract. You told me that in this office.

"E. E. Huddleson: It was only natural that I would contract the work when several people wanted it, at less money than it was costing me.

"Woods: Wednesday morning before the boys went down, they told your Foreman in the Plant that he contacted the Foreman about them going to the meeting and there wasn't any word given to those men that they were supposed to work at 6 o'clock and the Foreman told them to come back as soon as they got through with the meeting. The Foreman was supposed to have told five of the men that.

"E. E. Huddleson: They were told that they were expected to go to work at 6 o'clock and work their full shift.

"Woods: No. No. They were told they could go to the meeting and come back.

"E. E. Huddleson: I went to the men myself and talked to them and I know what they told me.

"Jackson: Don't you think it is okey with the proposed agreement to take these men back?

"E. E. Huddleson: [354] What will I do with the other men I have working here?

"Bridges: The other men came in under Strike conditions.

"E. E. Huddleson: This man had been after me for five or six weeks, before I gave the Contract to him.

(Testimony of E. C. Woods.)

"Bridges: Is that Contract for any definite period of time?

"E. E. Huddleson: The Contract is for twelve months.

"Jackson: Is it a verbal Contract, Mr. Huddleson?

"E. E. Huddleson: No.

"Jackson: I would like to find out who is handling this. Isn't it Mr. Jerome?

"E. E. Huddleson: I don't know Mr. Jerome.

"Woods: Manuel Gomez is the Contractor—isn't that right, Mr. Huddleson?

"Bridges: And you turned right around that night and called this man up and replaced all of the men this same night?

"E. E. Huddleson: I didn't replace them at all—they quit themselves.

"Bridges: We would just like to know—you still maintain your position that the men are not going to be re- [355] turned to their jobs?

"E. E. Huddleson: My position is that I now have a Contract for all Warehouse work.

"Bridges: We believe we have a good argument in the eyes of the Labor movement. A bunch of men joined the Union and through it left their jobs. You replaced these employees—we call them scabs—you call them employees, that replaced the men that walked out. Our job is to bring all of the resources we can get to help the labor situation, and we intend to do it. We thought we would lay the situation before you and see if we could get anywhere. It is evident that we can't do anything, so we may as well be on our way and see what else we can do.

(Testimony of E. C. Woods.)

"Woods: As these men have been working here for three years, they have much more claim on the jobs than the men that are here at present.

"E. E. Huddlson: If I hadn't contracted the work, that might be another story.

"Bridges: We still maintain our position—regardless of who has the Contract. The Contract won't hold water in this case. Opposition is very strong and we can enlist enough force to get the men back on the job, [356] although we have tried to avoid it. It has to be done to uphold the principle that they can join a Union and still get work. If it is your definite answer that the men are not going to be returned—not because of anything they have done on the job, but things in their own private lives, it is up to us to change it. You have a certain amount of men that exercised the right to join the Union.

"E. E. Huddleson: I think they made a serious mistake in the way they went about trying to better their condition.

"Bridges: We reserve the right to go about it any way we want. How should they have gone about it, if they did go about it in the wrong way?

"E. E. Huddleson: You tell me they didn't want 62½¢ an hour, and all of the other conditions asked for in the Contract you submitted. If they didn't want that, why didn't they ask for what they did want and not walk off the job, in which case I wouldn't have had to let a Contract in the first place.

(Testimony of E. C. Woods.)

"Bridges: As our proposal stated to you—and we don't have to tell you about Union activities, as you have belonged fifteen years—that is the only way to do it. They send out a proposed agreement and they expect a pro- [357] posal back from you as to what you can do. They expect to get a proposed agreement back from you. There was no notice served on you that if you didn't accept these demands they would walk out. Don't you think you could fix up some proposed agreement and give it back to us?

"Woods: The Union is making a formal request now that the men be reinstated.

"E. E. Huddleson: I now have my Warehouse under Contract.

"Woods: This contract seems to have been let for this purpose—to get rid of these men that walked out. You told me that if you had to go through with any agreement with them on Wednesday morning that you would let this work out under Contract. You told us there were certain men that wouldn't be reinstated because of something they had done outside of the job entirely.

"E. E. Huddleson: Let me ask you something, Mr. Bridges. If you had men that had been working for you steadily for years coming around and terrorizing your home in the middle of the night, would you take them back on the job? Just put yourself in my position for a moment. How would you feel about it?

(Testimony of E. C. Woods.)

"Bridges: Well, you are pretty well acquainted with the Police [358] Force, who have certain forces to take care of these things if we can't take care of them ourselves.

"E. E. Huddleson: I can take care of such things myself—unfortunately, however, I wasn't there—I was down here.

"Bridges: If I was an operator of a Plant and if my employees came around terrorizing me, I would say that that man wouldn't work for me any more and I would refer him to those particular forces.

"E. E. Huddleson: And it just so happens that I know who these particular men are.

"Bridges: All right, file charges with the Police against them. You are hiring men to produce eight hours' work. You are not hiring them to go good citizens on the outside; that is the Police force's job. It is their job to punish them and penalize them. It is not the job of the operator of the plant to say—you can't work here because of anything happening in their private life.

"E. E. Huddleson: Nobody is going to investigate it for me. I know who these men are. My wife knows every man in this organization by his first name, as she worked here. So, I am not guessing and the matter doesn't need [359] investigating. I know positively. I am not in a position to put the other men back in the Warehouse, because I am not going to tell this man that has a Contract with

(Testimony of E. C. Woods.)

me to go and let his men go, and take the others back in their places. I will take them back as I can work them in and as I see fit.

"Bridges: As a formal request, leaving the six men out who were disorderly, you won't agree to do it?

"E. E. Huddleson: I am not in a position to do it.

"Bridges: Well, that means "No?"

The other six men, regardless, are not going to get back because they made an attack on your home?

"E. E. Huddleson: They should be prosecuted.

"Bridges: Then, we will have the men arrested and you prosecute them. If these men attempted to attack anybody's homes, they can be identified, arrested, and punished, and we will certainly keep our hands out of it. That will dispose of the six men. However, you maintain that you are going to keep the punishing in your hands and they are not going to work here any more. In other words, you want them charged and sentenced without a trial or anything. Isn't that your position?

"E. E. Huddleson: No.

"Bridges: Who made the decision that these men can't work here? You did. The men are robbed of their living. They attacked your home and on that evidence you made this decision, and yet you say you wouldn't try the men and sentence them. I can't see your position. Turn them over to the people who are paid to do this sort of thing.

(Testimony of E. C. Woods.)

"Woods: It certainly wasn't authorized by the organization to do anything of that kind. We don't agree with any action of that kind and we don't want any of that kind. It seems as if you feel we must have put those men up to doing some of the things they did, but we haven't.

"E. E. Huddleson: If you see fit to misinterpret what I have told you, okey.

I told you I had a Contract and that there were only six men that I won't allow to work for me. No employee has any right to enter into anyone's personal rights but I am just a little particular about who works for me and I will hire any man I like better than someone else, and any time I can hire someone who has a family and takes care of it, I will hire [361] them in preference to someone who doesn't. I have the right to designate between the type of men who work for me, and I prefer to hire good citizens.

"Bridges: You have no right to judge whether a man is a good citizen or not.

"E. E. Huddleson: Most of these men I will put back to work. I can't put them back in a body because I have the work contracted. Most of them are good workers and I will put them back to work in the organization when I have an opportunity to do so.

"Bridges: You will get them all back to work—when? In a certain period of time—say, one week?

"E. E. Huddleson: I will have them all back when it is convenient to do so, except these six men.

(Testimony of E. C. Woods.)

"Bridges: The reason you don't want these six men is that they have been terrorizing people's homes?

"E. E. Huddleson: Yes, and rocking trucks, etc.

"Bridges: However, you won't agree to reinstate these men within a peroiod of one week, with the assistance of the Regional Labor Relations Board?

"E. E. Huddleson: How I employ the men that work for me is my business. [362]

"Bridges: How you run the men is our business. You would not agree to an arrangement? You claim you have a right to do these things and you think we haven't.

"E. E. Huddleson: Mr. Bridges, you are the type of fellow that would miscontrue any statement I make to you. I made a plain statement as to what I wanted to do, and I don't want to argue with you.

"Bridges: In that case, we have two opinions that conflict—there is only one way to settle that.

"E. E. Huddleson: I am not arbitrating my opinion.

"Bridges: I am expressing the men's opinions who are or were employees of this company, and under the law, still are, although they are standing outside. We can't agree what can be done with the men, but we are asking you if the men can be reinstated,—and a third party—an impartial party—would be asked to give us a decision on the matter.

"E. E. Huddleson: I don't want to argue.

"Bridges: I don't either.

"E. E. Huddleson: You got my statement and I will give you a written transcript of it, so let it lay there. [363]

(Testimony of E. C. Woods.)

"Jackson: Would you be willing to put this up to arbitration? That is, to keep out of all of this trouble ahead, or whatever might happen?

"E. E. Huddleson: What do you want to arbitrate, and on what basis?

"Jackson: We represent the men—you represent the Company—and an outsider—whatever ruling he makes, we will decide to arbitrate.

"E. E. Huddleson: I have nothing against the men whatsoever. I don't give a damn whether they belong to a Union or not—that is their business—but I want to know from the Union, after we arbitrate,—are they going to make any demands on me later on, that they are to receive more money from me under different working conditions than any other Canner in the Industry is paying?

"Bridges: This is the way it is handled. We give you a proposed agreement, you give us a counter agreement. You don't intend to accept that? They are organized for that reason and intend to fight it.

"E. E. Huddleson: I feel these fellows should have better conditions. I went back to Washington for the Canning Industry of California under the N. R. A. I am the only man [364] that argued shorter hours and 50¢ an hour minimum wage in the canning industry. I thought seven hours would be sufficient in the Canning Industry and a minimum wage of 50¢ an hour, and I said that if you had it in all industries—that the minimum wage would allow everyone about $3.50 to spend every

(Testimony of E. C. Woods.)

night, and if you did that, the conditions in this country would be made better. That is a matter of record.

"Bridges: The thing to do is to put it into practice.

"E. E. Huddleson: You can't expect one man to do it when the others are doing it for less.

"Bridges: However, there were no demands made on you—the situation rests. We can't get anywhere. Our request is that the men be reinstated on the job. Your position, as we get it, is that the men will be returned over a certain period of time—and that the six men would not be returned. We made a suggestion that a third party be brought into it and the differences straightened out.

"E. E. Huddleson: I want to know what demands are going to be made on us by the Union that these men belong to—I have no objection to them belonging to it—but I [365] want to know whether the Union is going to demand higher wages and shorter hours, etc., after we get them back, than the other Canneries are paying.

"Bridges: The question right now is to get the men back on the job.

"E. E. Huddleson: And let anything happen?

"Bridges: We believe there have been certain men discriminated against. We request that the men get back on the job.

"E. E. Huddleson: After you get them back in, are the demands going to be that we will have to pay a higher rate of wages than the other people

(Testimony of E. C. Woods.)

in this Industry? Is that going to be just the follow-up step?

"Bridges: We will try to get the best possible wages and best possible conditions for the men.

"E. E. Huddleson: In this Plant?

"Bridges: In this Plant and the other Plants.

"E. E. Huddleson: Are you going to call them out on strike, then, if we refuse to pay wages higher than other people in this Industry are paying?

"Bridges: Such things are not done because we tell them,—they are voted on by the men themselves. The present grievance is that the men are not on the job and have [366] a perfect right to be.

"E. E. Huddleson: If they come back at the same rate of pay, etc., are we going to be asked by the Union if these men are going to be called out on Strike later if we refuse to pay the same rate of pay etc., as the other Canners in the Inudustry?

"Bridges: What we want to know is—"Are the men going to be put back on the job?" The controversy now centers about certain men—not around hours and wages.

"E. E. Huddleson: I want to know under what conditions they are coming back and under what conditions they are going to stay.

"Bridges: We are asking that the men be reinstated under the same wages and conditions as when they left. After that is done, we can take up the question as to what the other demands are.

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 28, 1937.

CERTIORARI GRANTED DECEMBER 6, 1937.

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PAGE

No. 8432

United States

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

SANTA CRUZ FRUIT PACKING COMPANY,
a corporation,
Respondent.

Transcript of Record

In Two Volumes

VOL. II.

Pages 385 to 760

Upon Petition for the Enforcement of an Order of the National Labor Relations Board.

Parker Printing Company, 343 Sansome Street, San Francisco

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PAGE

(Testimony of E. C. Woods.)

"E. E. Huddleson: You are going to tell me what the demands are going to be first—you can't do that with me—I don't want this controversy started all over again, and we may as well go on with it now.

"Bridges: Well, that is up to the men themselves. [367]

"E. E. Huddleson: I have a full crew of men here. I am going to have to put them out to put these others back, and then after I do that, they can say, "Here are the demands—we won't work unless we get them." Then, I will have to go out and get more men to take their places.

I am not going to agree to arbitrate a question of wages. We are not going to pay any more wages or work under any different conditions than the balance of the people in the Canning Industry, of which we are only one out of 57. This is what I mean—I can't afford to do it and I know what the answer would be.

"Bridges: The question that the whole thing involves now is that there have been no demands made for an increase in wages, better hours, etc., at this time; the only demand being made right now is that these men be returned to work, and that if there is any question of these six men not being employed again, this could be taken up with a third party and he would decide—now, that is our position.

"E. E. Huddleson: You ask me to do that, and then just wait and see what happens from there

5803

(Testimony of E. C. Woods.)

on. You don't want to make [368] any guarantee as to how long they will remain on the job, etc.? You are going to take these things up afterwards?

"Bridges: We are asking that they come back to work.

"E. E. Huddleson: I want to know what the demands are going to be.

"Bridges: The only demand is that the men be reinstated and that any differences be referred to the Regional Labor Board.

"E. E. Huddleson: I have nothing to add to our conversation, Mr. Bridges, I have already made my position clear.

"Bridges: Is your answer, "No," as we will be questioned by the Labor Board.

"E. E. Huddleson: I don't wish to discuss it any further." [369]

Cross Examination.

Q. (By Mr. St. Sure) You mentioned, Mr. Woods, upon being asked as to the organization in various cannery warehouses, that the Rosenberg cannery warehousemen had been organized.

A. That is correct.

Q. What sort of canned goods does Rosenberg Bros. put up?

A. I don't know just what kind of canned goods they put up. It is mostly a packing house. They have warehouse work there the same as any of the other warehouses. It is case goods that they stack, and they do the same identical work as any other warehouse.

(Testimony of E. C. Woods.)

Q. Did you have dealings with any of the officials of Rosenberg Bros. in connection with organizing their cannery warehousemen?

A. I did.

Q. With whom?

A. I don't recall his name right now.

Q. Mr. Rothchild?

A. He was one of them.

Q. Mr. Higgins.

A. No, not Mr. Higgins.

Q. Mr. Oppenheimer?

A. I think not. It is a contractor that does that work, and I don't recall his name right now. [370]

Q. Oh, a contractor does the work for Rosenberg Bros.?

A. Yes sir.

Q. And when you say that Rosenberg Warehouse is organized, you mean that the contractor's men are members of the union, is that correct?

A. Well, they are paid by Rosenberg checks.

Q. How many men are involved in that operation at Rosenberg Bros.?

A. During their busy season they use about fifteen men there.

Q. What is their busy season?

A. I don't know just what their busy season is. I think it is around July.

Q. You say they use about fifteen men there at times?

A. That is right.

(Testimony of E. C. Woods.)

Q. When was that contract negotiated?

A. Sometime, three or four months before this Santa Cruz.

Q. Three or four months before?

A. Yes.

Q. Who signed that contract on behalf of Rosenberg Bros., or was it signed?

A. That isn't a signed contract because they pay over the scale; in place of 62½ cents, they paid 72½ cents.

Q. So you have no signed contract?

A. No signed contract. [371]

Q. Do those men do labeling?

A. Yes sir.

Q. And operate printing machines?

A. Yes sir.

Q. And they do that under contract, you say?

A. I think it is all done under contract. I am quite sure it is.

Q. Now, Libby, McNeill & Libby—by the way, you know that Rosenberg Bros.' plant esentially handles dried fruits in their Oakland plant; you know that, don't you?

A. Rosenberg?

Q. Yes.

A. Yes.

Q. What about Libby, McNeill & Libby, their plant across the street, do they handle green vegetables and fruits?

A. They have a regular cannery in their plant there.

(Testimony of E. C. Woods.)

Q. Do you know—down there opposite Rosenberg Bros.?

A. Yes, one end is the canning plant, and the other end is the warehouse.

Q. They do a regular canning business of green vegetables and fruits down there?

A. Yes sir.

Q. How many men do they have in their warehouse?

A. I would say they had 25.

Q. And when was your contract, or have you a contract with [372] Libby, McNeil & Libby?

A. It is the same thing; they pay 72½ cents.

Q. Have you a written contract there?

A. Well, we don't want to sign up a contract for over what we have in the other warehouses. If they want to pay 72½ cents, well we don't want to have a contract with one of them, so the contract stands at 62½ cents, and if they pay over it, they don't have to sign a contract.

Q. Is there any contract existing, written contract, at any figure?

A. A verbal agreement, sir.

Q. A verbal agreement?

A. Yes.

Q. Did you have any negotiations at all then with those people that were paying more than the scale that you charge in commercial warehouses?

A. No sir, they were paying 35 cents before.

Q. Paid 35 cents before?

A. Yes.

(Testimony of E. C. Woods.)

Q. Before what date were the Rosenberg people, now getting 72½ cents, receiving 35 cents?

A. I couldn't tell you. I haven't the record of that, sir. We have it on record, but I haven't it with me.

Q. And you say Libby, McNeill & Libby warehouse was likewise paying 35 cents and it was increased to 72½ cents? [373]

A. 35 to 40 cents, yes sir.

Q. About when did the change with Libby, McNeill & Libby take place?

A. The two of them changed about the same time; about two or three months before we started to organize Santa Cruz.

Q. Was that before or after the organization of the Dried Fruit & Lug Packers Union at the Rosenberg plant, do you know?

A. That was before.

Q. How long before?

A. Oh, it was sometime before. I don't recall just how long; it was quite some time before.

Q. Did you submit a form of contract to Rosenberg Bros.?

A. No sir.

Q. Did you make any demands—I mean, how did you go about this matter of accomplishing this change which you say took place?

A. We went to them and told them that our men were organized there, and they said it was fine; and they asked us what our demands was, and we demanded the terminal rate, and they gave it to us.

(Testimony of E. C. Woods.)

Q. Demanded the terminal rate?

A. Yes sir, in the warehouses.

Q. And the terminal rate is what?

A. 72½ cents. [374]

Q. You don't class them then as warehouses; you class them as terminals, is that it?

A. No sir, we class them as warehouses. That is a warehouse.

Q. Well, now, you say the Haslett form of contract, and Haslett operates a commercial warehouse, don't they?

A. Right.

Q. His rate is 62½ cents?

A. That is right.

Q. What is the distinction between that work, in your mind, and the work at Rosenberg Bros.?

A. Well, the Rosenberg plant, there they do a little high piling, the same as they would in this canning company; they do high piling there, and we figured it was worth more money to do high piling. They figured it was worth more money, too, and they brought that out themselves. They said it was harder work than that.

Q. In any event, you classify Rosenberg and Libby, McNeill & Libby on the basis of a terminal rate?

A. We did not.

Q. Who did?

A. They did themselves; they classified the pay, not their work, as terminal work.

(Testimony of E. C. Woods.)

Q. I thought you said a few moments ago—at least you made demands upon them for the terminal rate, we will put it that [375] way, is that right?

A. Well, we asked for 72½ cents an hour. That happens to be the same thing that the terminals get.

Q. All right. Now you mentioned that Haslett and other warehouses in the community have this contract that you refer to as the Haslett contract, at 62½ cents; is that correct?

A. Say that again.

Q. I say, the Haslett warehouse, and other commercial warehouses, have the 62½ cent rate, is that right?

A. That is right.

Q. And do you have signed agreements with all the commercial warehouses?

A. That is right.

Q. And—

A. (Interrupting) Just where do you mean, here or in 'Frisco?

Q. In Oakland.

A. No, I wouldn't say that we have every one of them here. There might be one we haven't got, but we have the majority.

Q. And when you submitted an agreement to the Santa Cruz plant, you submitted it on the basis of the 62½ cents an hour rate, is that correct?

A. Do you mean the proposed agreement?

Q. Yes. [376]

(Testimony of E. C. Woods.)

A. When we presented the proposed agreement —you have it there—it calls for 62½ cents.

Q. And that was on your reasoning that the work at the Santa Cruz plant was comparable with that done in the commercial warehouses, is that right?

A. With the exception of the high piling. We don't do that in commercial warehouses.

Q. Otherwise you feel the work is the same.

A. Yes sir.

Q. Now you mentioned the Del Monte, or California Packing Company. That is at Encinal Terminal, and that is known as Plant 48, isn't it?

A. Yes sir.

Q. What arrangement did you have with them?

A. The same thing, because they pay 72½ cents.

Q. They pay 72½ cents, is that correct?

A. Correct.

Q. You have a signed agreement with them?

A. No sir.

Q. And you say that only 40 to 50 per cent of their people are members of the union; is that right?

A. Yes sir, because they have stragglers coming in and out all the time and they don't belong to the union.

Q. Have you any signed, written agreement with them?

A. I just told you we didn't. [377]

Q. Pardon me if I seem to repeat. Just keep patient with me. How many people are there at the

(Testimony of E. C. Woods.)

Plant 48, do you know, who are doing this cannery warehouse work?

A. It varies.

Q. Well, what is your best judgment of the high and low during the season?

A. Runs from, I will say, eight to fifteen.

Q. Now in connection with Plant 48 in Alameda, that is located at the Encinal Terminal, is it not?

A. Across the street—across the railroad tracks.

Q. And the Encinal Terminal is organized, is it not, by 38-44?

A. No sir.

Q. Any I. L. A. Local?

A. By all I. L. A. Locals.

Q. It is organized then by all I. L. A. locals. In negotiating with the Del Monte people, at Plant 48, with whom did you negotiate that agreement?

A. I didn't negotiate that agreement.

Q. Who did, do you know?

A. Mr. Jack O'Connor.

Q. When was that negotiated?

A. I don't recall.

Q. Now, apart from the Rosenberg plant, which is operated on the Port of Oakland property at the 14th Street Terminal, [378] and the Libby, McNeill & Libby plant—and that, by the way, is on the Port of Oakland property at the Terminal, isn't it?

A. I don't think so. I think they have their own place. It is across the road, and it is a separate building. Their buildings are quite aways apart, and there is nothing else in Libby, McNeill & Libby but

(Testimony of E. C. Woods.)

them; and in Rosenberg the same way. So I am sure that they have full control of their buildings.

Q. I didn't ask that. I asked if they weren't on the Port of Oakland property and if they didn't have a lease from the Port of Oakland. Do you know?

A. I don't know.

Q. At Rosenberg Bros. you know there is a sign on the building there to that effect, isn't there?

A. I didn't notice that.

Q. Apart from those two plants in Oakland, Rosenberg and Libby, McNeill & Libby, and Del Monte, which is across the railroad tracks from the Encinal Terminal, do you have any agreement with any of the green fruit and vegetable canners in Alameda County covering the warehouse operations?

A. Verbal, yes.

Q. With what plants, please?

A. All three of them.

Q. All what?

A. All three of those plants. [379]

Q. I say, except those three that I mentioned.

A. With the exception of those three, no, we haven't.

Q. Do you have any agreement with either Rosenberg, McNeill, Libby & McNeill or Del Monte, California Packing, concerning the employment of others than union members.

A. Say that again.

(Testimony of E. C. Woods.)

Q. Do you have any agreement with either Rosenberg, Libby, McNeill & Libby or California Packing concerning the employment of men who do not belong to the union?

A. Rosenberg hires nothing but union men, and hires them all directly through the hall.

Q. Is that by agreement?

A. Yes. Libby, McNeill & Libby hires nothing but union men, and hires them all directly through the hall.

Q. Yes. California Pack?

A. I have told you they used some non-union men.

Q. If Rosenberg or Libby, McNeil & Libby failed to hire their men through the hall, would that be a violation of the agreement that you have with them?

Mr. Edises: I think that is calling for a legal conclusion from the witness, don't you, Mr. St. Sure?

Mr. St. Sure: Withdraw the previous question.

Q. (By Mr. St. Sure) Does this verbal agreement you have with Rosenberg and with Libby, McNeill & Libby specify they shall employ all men for their warehouse operations through [380] the hiring hall?

A. It does.

Q. If Rosenberg, or Libby, McNeill & Libby, either of them, employed men in the warehouse who were not members of the union, what action would the union take?

(Testimony of E. C. Woods.)

A. They never tried that.

Q. In other words, you don't know until it happens, is that it?

A. No sir.

Trial Examiner Traynor: We will take a recess for five minutes.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Mr. St. Sure: Off the record.

Trial Examiner Traynor: Off the record.

(Discussion off the record.)

Mr. St. Sure: At this time I renew my request for an adjournment.

Mr. Edises has just mentioned to me that the Board itself apparently has declared a half holiday today, and also will on the 31st of December have a half holiday, so I do not think we are out of order in asking for an adjournment now.

I also understand from Mr. Kagel, and he can make his own statement concerning this, that the men are satisfied to withdraw their objection, from the union point of view, to an [381] adjournment at this time.

Mr. Kagel: That is true.

Mr. Edises: My position, I think has been fully stated in my prior statement, and I have at this time nothing to add. But I believe Mr. Kagel, representing the union, has a statement to make in that connection.

(Testimony of E. C. Woods.)

Mr. Kagel: Mr. Examiner, Mr. St. Sure is correct in his statement. During the noon recess I took up with the men directly interested in this matter the question of a recess until after the first of the year, which I believe was the original request of Mr. St. Sure.

In view of the fact that the men have had so little employment since the lockout, and that at the present time we have a busy season, the men would like the opportunity to get whatever work is available.

With that in mind, we withdraw the objection and we are prepared to go on at such date as the Examiner sets.

Mr. Edises: Prior to the Examiner's ruling on adjournment, may I request the production of the materials mentioned formerly, namely, the data in regard to the interstate commerce; and may I further request, in so far as practicable and convenient, that counsel for the Respondent be guided in the production of those materials, by the list of data contained in my letter to them of an earlier date.

Mr. St. Sure: I don't want to be in the position of [382] being misunderstood, or having the suggestion made later on that I misunderstood the request.

First, I do not think we want to be talking about disagreeing upon the basis of things that are technical. I am not offering to produce things with relation to interstate commerce. I think we understand what the issue of law is in the matter in our position, as well as that of the Board.

(Testimony of E. C. Woods.)

Mr. Edises: This is only to shorten matters.

Mr. St. Sure: I undertook this morning, and I now undertake formally to produce a statement of percentages, which is subject to verfication if the figures are questioned, as to what proportion of the pack of the Santa Cruz Fruit Packing Company, during the period of the season 1935, or the year 1935, was sold to and, in some fashion shipped or destined to purchasers in the United States outside the State of California. That proportion we will state in percentages.

Similarly, the proportion of goods destined to ultimate purchasers outside of this country, that is, in foreign countries. Those, likewise, will be stated in percentages.

This is with the understanding that we should like to offer, and I understand the Board similarly desires to offer, the forms of contract under which the sales were consummated.

This offer is to be made, or that material to be produced, by us without the production of it amounting to a waiver of any of the objections or reservations we previously have made; [383] and with the stipulation going solely to the question of the facts, that the thing that we are producing and will produce, is a statement of fact, without waiving our objections or reservations, and without admitting the materiality of those facts in connection with the statements that I have mentioned.

I have attempted to clarify my position in connection with what we will undertake to produce, and the

(Testimony of E. C. Woods.)

circumstances under which we will produce it, inasmuch as there were other demands made upon us which are not directly related to the matter of the percentages of the pack, the purchasers and the ultimate destination of the goods sold, so there will be no misunderstanding, and so I will not come in with less than you anticipated.

Mr. Edises: I have no objection at all to the matters that you have indicated you intend to bring in, Mr. St. Sure; but I do feel that the percentages alone would not be sufficient, that it is quite as material, if not perhaps more material, to have the quantities of these various products.

My reason is that it should be evident that, in the absence of any such figures, a company might, as an extreme hypothetical case, turn out only ten cases a year, and even if nine-tenths of those were shipped out of the state, or out of the country, the maximus de minimus would probably apply and it would be contended that this case was not engaged [384] in interstate commerce.

Mr. St. Sure: I assume counsel has in mind the extent of the repercussion as a result of the language used in some recent cases. I do not know any reason why we cannot, instead of having figures which mean nothing, state that the total pack for the year was so many cases, and then the percentage will mean something. In other words, I have no object in hiding the fact as to the extent of the business done out there.

Mr. Edises: That is satisfactory.

(Testimony of E. C. Woods.)

Mr. St. Sure: The thing we object to is the fact that we do not choose to reveal the matters which our customers might believe were not the business of this proceeding, and that is the extent of their business with the Santa Cruz Company, the rates, prices, credit arrangements, and things of that kind.

The first request was on that basis and we declined it. It isn't our desire to make a mystery out of something which is an admitted fact. I feel I can state that what we will produce will be figures that will be intelligible and not leave us in the position where subsequently it might be said that our pack consisted of ten cases, and ten per cent amounted to one case. We don't want to cloud the issues by any such contention.

Mr. Edises: That will be agreeable. [385]

May I at this time, because I believe it would be convenient, request also the production of the time cards of the employed men during this critical period? I believe, for the purposes of comparison, and in order to indicate what changes, if any, of management and so on took place, that it might be advisable to have them for a day or so before and a day or so after; and, offhand it occurs to me if we could get those from the period, say August 1 to August 10, it would be very helpful and material.

It occurs to me that there was no mention of Stokely in your previous offer. I do not know whether your failure to bring them in was the lack of the matter of power, or just what. But I would like to have the same figures with reference to the

(Testimony of E. C. Woods.)

materials produced at Stokely, unless we can enter into some kind of a stipulation as to the relation of Stokely to Santa Cruz.

Mr. St. Sure: I am not in a position to produce the figures concerning the Stokely situation. This I state without desiring to have it binding upon my client, but simply to indicate to the Examiner the nature of the relationship as I understand it, and I make this statement upon the same basis and with the same reservation previously made, with the one more, as I do not choose to be bound by it because I am stating from guess and general information and not from knowledge of facts: [386]

That Stokely Bros., in so far as a portion of the pack packed for that firm by Santa Cruz, are in the position of any other contractor and have a contract to purchase materials which are then stored across the street in the Stokely warehouse. It may be we will be able to produce information, although I can't undertake to do that, showing the basis of arrangements between Stokely Bros. and Santa Cruz.

In any event, I cannot undertake to agree to furnish the like material concerning the Stokely pack; I mean as to where it goes, or what becomes of it. I am not in position to furnish that material.

As to the extent of the total pack of Santa Cruz which is delivered to Stokely, it may be that we can produce those figures, if that would be desirable from your point of view.

As to the time cards, I think I can undertake to produce those for the period from August 1 to

(Testimony of E. C. Woods.)

August 10, covering the men in the warehouse operation.

Mr. Edises: Would that include the Stokely men?

Mr. St. Sure: That I don't know. I can offer to produce as far as Santa Cruz is concerned; and if the Gomez contract—and I believe you have a copy of it—covers both Stokely and Santa Cruz operations, we can produce the Gomez contract.

As to Stokely time cards before the time of the change of contract, I cannot be sure of that, whether I can produce them. [387]

Mr. Edises: I am willing to leave it to counsel's good will in the matter. I feel that I would like to have it understood that if there is a reasonable possibility of our getting those matters, without being required to resort to subpoenas and matters of the like, I prefer to have it done that way.

Mr. St. Sure: I want to go as far as I can. That is why I tried to make clear the things that I think I can produce, as well as the things I may not be able to produce.

Very frankly, there are certain matters involving matters of policy in the business relationship over there which I am not in control of, and as to those things that I feel that I can in fairness make the offer and keep faith in the making it it, those things I will undertake to produce; those things which I cannot—Mr. Edises has indicated the things he would like, in addition, and if I cannot produce those I will state I cannot, after checking up.

(Testimony of E. C. Woods.)

Trial Examiner Traynor: That is clear. That helps matters considerable.

Mr. Edises: As far as I am concerned, I do not want any data or material on the purely internal affairs of Stokely or the Santa Cruz Company, except as do bear upon this determination that we are now concerned about. That has been my policy, is my policy, and will continue to be so.

Mr. St. Sure: My thought has been in this entire matter to put the facts before the Board. I was very much [388] concerned, as I think a lawyer would be, when I heard the statement made in connection with the previous hearing of this sort, that one witness was on the stand four days while technical objections were argued, that perhaps I wasn't doing what I was supposed to do. But I feel, in the interest of all of us, that the quicker we can get at the facts in the matter, and leave the determination of the matters of law and their application, to the Examiner and the Board, the better off we are going to be.

I do not want the Examiner to think we are sliding through this thing; on the contrary, we are going to present all the matters as rapidly and as clearly as we can. I think Mr. Edises has the same thought in mind.

Trial Examiner Traynor: I feel it has been done, and that counsel are to be commended upon the manner in which the case has been presented so far.

Mr. St. Sure: At this time I want to renew my motion, the reasons for which have already been

(Testimony of E. C. Woods.)

stated, to adjourn the hearing now until January 2. I will want Mr. Woods to return at that time for further cross examination.

Trial Examiner Traynor: And you want to discontinue right now?

Mr. St. Sure: I think it will save time all around.

Trial Examiner Traynor: You want to discontinue right now, right this minute, or would you rather continue [389] until 4 o'clock?

Mr. St. Sure: Right now, yes.

Trial Examiner Traynor: In view of the information that I have from both counsel, and in view of the fact that I probably could not be here Friday and Saturday, and Monday afternoon, the hearing will adjourn until January 2, 1936, at 10:00 o'clock a. m., in this room.

(Thereupon, at 3:35 o'clock p. m., an adjournment was taken until January 2, 1936, at 10:00 a. m.) [390]

[Title of Court and Cause.]

Extra Sessions Courtroom
Alameda County Court House
Oakland, California
Thursday, January 2, 1936.

Met pursuant to adjournment at 10:10 o'clock a. m.

PROCEEDINGS.

Trial Examiner Traynor: Are counsel ready to proceed?

Mr. St. Sure: Yes.

(Testimony of E. C. Woods.)

Trial Examiner Traynor: I believe you are to continue with your cross examination of Mr. Woods?

Mr. St. Sure: Yes. [391]

Trial Examiner Traynor: Mr. Woods has already been sworn.

Mr. St. Sure: At this time, in accordance with the undertaking to produce certain materials, subject to the reservations which were made at that time, that is, without waiving our objections to the proceeding, jurisdiction, materiality, constitutionality of the Act, and with the understanding that the offer is made solely upon the basis of the stipulation of the correctness of the material offered, and not as to its materiality in the proceeding, or its relevancy, or its admissibility, I have here the time cards for the period from August 1 to August 10, inclusive, 1935. They are divided into groups, each group representing one day, and they bear the name of the employe, the respective employes, and the number which I take it is the company check or time card or time clock number; those for the period from August 1, including August 1, 2, 3, 4, 5, and 6, and bear across the top, or end of the card, the legend, "Santa Cruz Fruit Packing Company," and simply for the purpose of identifying them for the record, on each card is printed "Indirect and warehouse labor."

I haven't counted these cards, nor do I really know what they disclose, but I offer them for such use as counsel desires, with the stipulation that I

(Testimony of E. C. Woods.)

mentioned, and with the understanding, further, that we may, if the Examiner desires [392] to retain them as a part of the record, make copies and substitute the copies for the originals, which are to be returned so we may have them at the plant.

Also there are here the cards for August 7, 8 and 9, and the 10th, which are in the same form, with the exception that the legend at the end or top, which reads, "Santa Cruz Fruit Packing Company," has been cut off, or the cards made shorter, and the printed portion across the top has been left off and on the face has been stamped with a rubber stamp, "Manuel Gomez."

We produce these cards with the same understanding, and subject to the same reservation.

Also, in connection with the matter of percentages, subject to the same understanding and reservations, and without any waiver of any of the objections which have been made, I can state that the total pack of the Santa Cruz Fruit Packing Company, for the year 1935, together with the carryover from the previous year's pack, totaled 1,699,270 cases; of this amount 9.02 per cent was sold to purchasers having their offices, or apparent principal places of business, outside of the United States; and those cases, that 9.02 per cent, were sold to those purchasers on the following basis:

7.02 per cent of the sales referred to, that is of this 9.02 per cent, were sold pursuant, or under a c.i.f. contract, in the form of which I am now offering a blank contract which [393] is captioned

(Testimony of E. C. Woods.)

"British Isles Canned Food Contract (as per specifications on obverse side) adopted by the Canners' League of California, April 25, 1922, with amendments to March 11, 1927."

A copy of this contract has been previously furnished to the Board. We desire to offer it in connection with our statement as to the facts and figures simply by way of explanation of the method, or the means for the basis of the sales to that 7.02 per cent outside of the United States on a c.i.f. basis.

Also, as to the remaining 2 per cent, which will make up the total of the 9.02 per cent sold outside the United States, that remaining 2 per cent was sold on a f.o.b. San Francisco Bay contract.

Now as to the remaining portion of the pack, upon the same understanding, we state that the sales to purchasers having their, as far as we know, principal place of business, at least the place to which the bills are sent, outside the State of California, amount to 69.68 per cent of the total pack.

Mr. Edises: Purchasers outside the State of California within the United States?

Mr. St. Sure: Yes, within the United States.

And as to the entire amount of 69.68 per cent, those sales are made, and were made, entirely upon the basis of a [394] Pacific Coast f.o.b. Canned Foods Contract, f.o.b. Oakland, or some San Francisco Bay point.

And in this connection we desire to offer, subject to the same understanding, a copy of that form of

(Testimony of E. C. Woods.)

f.o.b. Pacific Coast Foods Contract, a copy of the same form having been previously furnished to the Board. And simply for the purpose of identification, the printed form which I have here is entitled "Pacific Coast f.o.b. Foods Contract effective May 15, 1922, with Revisions to May 10, 1927, adopted by the Canners' League of California, and approved by the National Wholesale Grocers Association, as per specifications on the reverse side."

The remaining portion of the pack, that is, the difference between the 9.02 per cent and the 69.68 per cent, which are sold in the form that I have referred to, are sold and billed to purchasers who have their principal places of business, as far as we know, within the State of California, or that difference represents the carryover of the pack which is unsold.

I have those percentages worked out in numbers of cases, if that is desirable to have. If not desired at this time, we can produce that subsequently.

Anything else that I undertook to produce at this time that you recall?

Mr. Edises: I believe that is the substance of our [395] stipulation.

I would like to ask Mr. St. Sure at this time if he is in a position to include in the material he has just given, some information as to the form of the bills of lading in these shipments; for example, whether the bill of lading is made out to the seller or order.

(Testimony of E. C. Woods.)

Mr. St. Sure: I haven't that available. We can get it, I am sure, and will be pleased to undertake to do that, with the same understanding.

Mr. Edises: I would appreciate your doing that. I believe that that will complete the information that I would like to have on that point.

Mr. St. Sure: We offer for identification, under our reservation and stipulation, without our waiver of our rights in the matter, and for the purpose of the record, the time cards as Respondent's Exhibit No. 1 for identification only.

We offer the c.i.f. contract form, the one entitled "British Isles Canned Foods Contract," with the same understanding, as Respondent's Exhibit No. 2 for Identification only.

And, with the same understanding, we offer the f.o.b. Pacific Coast form of contract as Respondent's Exhibit No. 3 for identification only.

That will probably keep the record straight in that respect. [396]

Trial Examiner Traynor: They may be so marked for identification.

(The time cards referred to were marked Respondent's Exhibit No. 1 for Identification only.)

(The c.i.f. form of contract referred to was marked Respondent's Exhibit No. 2 for identification only.)

(The f.o.b. Pacific Coast form of contract referred to was marked Respondent's Exhibit No. 3 for identification only.)

Mr. Edises: May I explain a bit further my request in connection with information as to the form of bill of lading.

Mr. St. Sure: Sure.

Mr. Edises: I would like to have a statement as to the form of the bill of lading, with reference to whom it is made out, and also a statement of what other documents are included, as the document of the title, that is, insurance, or other documents of the sort, and whether or not there is a draft made out which accompanies the bill, and the terms under which it is presented to the buyer; and if it is presented to the buyer, just exactly how that transaction is carried out.

Mr. St. Sure: All right.

Mr. Edises: That will apply to the domestic and foreign shipments. I assume there is a standard practice in [397] that respect.

Mr. St. Sure: I don't know. I will find out.

Mr. Edises: If not, whatever is the practice.

Mr. St. Sure: I will find out what it is and get all the information I can, with the same understanding.

I think, as I look at these figures which have been produced, and the method of computation, has probably saved considerable time in arriving at the conclusion, rather than trying to go into the record to reach the results.

Mr. Edises: Yes.

(Testimony of E. C. Woods.)

E. C. Woods, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross Examination (Continued)

Q. (By Mr. St. Sure) Mr. Woods, do you recall when Mr. Anger first talked with you about the matter of his interest, or the interest of others in affiliating with the union which you represent?

A. I would like to refer back to the transcript. That question has been answered already.

Mr. Edises: Well, just a moment. You can answer that to the best of your recollection, Mr. Woods.

Trial Examiner Traynor: You should answer the question.

A. I think it was somewhere, as near as I can remember, [398] around the 15th of the month.

Q. (By Mr. St. Sure) That would be about the 15th of July?

A. That is right.

Q. And at that time did you discuss with Mr. Anger the matter of any specific request to be made to the Santa Cruz Fruit Packing Company concerning hours, or wages, or working conditions?

A. I did not.

Q. When did you first discuss with Mr. Anger any matters of that kind?

A. About the different things that were to be put to the company?

Q. Yes.

A. Those questions were not brought up at all, and—

(Testimony of E. C. Woods.)

Q. (Interrupting) You didn't—pardon me?

A. (Continuing)—and they were never brought up by Mr. Anger or myself.

Q. That is, you did not discuss with Mr. Anger at any time the matters of the specific terms of any contract that would be submitted to the management of the Santa Cruz Fruit Packing Company, is that correct?

A. The only information that I ever furnished on that was the contract that was signed, and as we referred to it before, as the warehouse agreement. I turned, furnished him [399] with one of those warehouse agreements that had already been signed by Haslett.

Q. When was it you furnished him with a copy of that agreement?

A. I think it was around the 5th; on Monday anyway.

Q. And had you by that time received applications from the men employed at the Santa Cruz warehouse for membership in the union?

A. I had.

Q. Under what circumstances did you give to Mr. Anger this copy of the Haslett, so-called Haslett agreement; do you recall? I mean where and when was it, and how did it come about that you gave it to him at that time?

A. He was going to take it to the men and see if that was agreeable with them to put—present that before the men as it was.

(Testimony of E. C. Woods.)

Q. And then what was he to do? Let you know whether it was agreeable or not?

A. He was.

Q. Then what were you to do? Take it up with somebody else?

A. No. If it would have been agreeable to the men, it would have been presented to the company.

Q. If it had been agreeable to the men it would then have been presented to the company? [400]

A. Yes sir.

Q. As a matter of fact, it was presented to the company before you knew whether the men agreed or not?

A. No sir, they told me that it was all right.

Q. Who told you?

A. There was half a dozen of the men out there. I don't recall any of their names, but Bob was in the bunch at the time.

Q. And what day was that with reference to the—

A. (Interrupting) Same day.

Q. You mean the same day you gave it to Mr. Anger?

A. Yes sir.

Q. And what did you then do, as far as this contract was concerned?

A. The contract was mailed to Mr. Huddleson.

Q. And do you recall whether that was the same day or the following day?

A. I think that—I don't recall.

(Testimony of E. C. Woods.)

Q. Well, did you mail it? I mean this contract, did you mail it to Mr. Huddleson?

A. It was mailed through the Labor Bureau.

Q. Pardon me?

A. It was mailed through the Labor Bureau.

Q. What is the Labor Bureau?

A. I think that the Labor Bureau is a Bureau that draws up [401] the agreements. In other words, it is a legal staff that draws up the agreements and mails them out, or looks them over for us.

Q. You mean they represent the union and not the Labor Board which is holding this proceeding?

A. No sir, not the Labor Board.

Q. You are referring to the Labor Bureau of the I. L. A.?

A. That is right.

Q. And do you know who there sent out this particular agreement?

A. Well, I couldn't tell you who did send it out, but it was mailed out from that office.

Q. Do you know when, I mean on what day?

A. I told you I didn't know what day. I am not sure.

Q. Well, now up to that time had you ever seen Mr. Huddleson to talk with at all?

A. No sir.

Q. Was there any meeting held, up to that time, with the men who had applied to become members of the union to discuss the terms of the contract?

A. No sir.

(Testimony of E. C. Woods.)

Q. In fact, the men themselves had not yet been initiated, had they?

A. No sir.

Q. Now do you know whether or not a copy of this contract [402] was sent to Stokely Bros.? I note they are referred to in the form which has been presented here, as parties to the contract, as well as the Santa Cruz Fruit Packing Company.

A. Would it be permissible to refer that question to Mr. Sam Kagel?

Q. I am simply asking what you know.

A. He mailed the agreement out.

Q. You yourself don't know whether it was mailed to Stokely Bros. or not?

A. To Stokely Bros., no. We didn't mail one out because that was understood, that is, that they were both under the same management, and Mr.—they were both under the same management, and I was told by Mr. Huddleson that he owned the two places, that is, 69 per cent of the entire two places, and if there was any dealings, that he would do it.

Q. When did he tell you that?

A. That is why there was no agreement made out for Stokely.

Q. When did he tell you that?

A. What?

Q. When did he tell you that?

A. In an interview with him.

Q. But you didn't see him at all before the agreement was mailed out?

A. No; after I went to see him about that. [403]

(Testimony of E. C. Woods.)

Q. The fact that you didn't send one to Stokely wasn't based on anything Mr. Huddleson told you at the time you mailed it out, was it?

A. No sir, not at that time.

Q. When was it that Mr. Huddleson told you this about his ownership, that you just referred to?

A. The same interview I had with him when I went to him about the men.

Q. When was that?

A. I think that was on Tuesday; either Tuesday or Wednesday.

Q. Was that before or after the initiation?

A. That was before.

Q. Was any one else there at that interview besides yourself and Mr. Huddleson?

A. No sir.

Q. After the night of the initiation, when you learned that the men had been replaced, did you do anything with reference to taking up with the affiliated unions the matter of the status of the Santa Cruz merchandise?

A. Yes sir.

Q. And what did you do in that connection?

A. I went to the other unions and told them that the Santa Cruz Fruit Packing Company had locked the men out.

Q. What unions did you go to?

A. Teamsters, Local 70 of San Francisco. [404]

Q. Local 70. That is what union, the Teamsters'?

A. Teamsters' union.

(Testimony of E. C. Woods.)

Q. Yes.

A. I went to the Labor Council here in Oakland.

Q. Yes.

A. And I went to the various locals in Frisco.

Q. What particular locals did you go to there?

A. All I. L. A. locals, and the Teamsters.

Q. Name them, please.

A. The Teamsters' Local, the Bargemen's Local, Sailors, Longshoremen, Teamsters, Scalers, and several of the various others.

Q. Dock clerks?

A. Dock clerks.

Q. Your own union, that is the warehousemen were included in the notice?

A. Yes sir.

Q. What was your purpose in going to these other locals, whether I. L. A. locals or locals of the American Federation of Labor? Why did you go to them?

A. They are all affiliated with the American Federation of Labor.

Q. Well, my question was why did you go to them, what was your purpose in going to them at that time?

A. It is the proper thing to do; it is the proper proced- [405] ure you always go through whenever a union is having difficulties.

Q. Well, could you explain that, please. I mean what is the procedure purposed to do, and what is the procedure itself?

(Testimony of E. C. Woods.)

A. It is merely a matter of form that you notify and keep in touch with the other unions of any difficulty that is going on. The unions then cooperate with you to the fullest extent; rather, they always have with us.

Q. What is that cooperation that you refer to? I mean what did you expect, and what did you receive by way of cooperation in this particular situation from these other locals?

A. A union—the main problem that I have always found on going to the Labor Council in things like that, is that no union man will patronize any goods from any unfair place.

Q. Well, with reference to the Santa Cruz goods, did that sort of cooperation develop?

A. It did.

Q. And did it go beyond the point—by not patronizing you mean the purchase or use of Santa Cruz products?

A. True.

Q. Did you go beyond that in this situation?

A. Clarify that, please.

Q. Well, did anything else occur as a result, so far as [406] you know, of your advising these various locals of the situation at Santa Cruz with reference to Santa Cruz cargo? I mean this: It was declared hot, wasn't it?

A. Yes sir.

Q. What is the process of declaring cargo hot?

A. It just means that no one would go in and out of that plant; no union man.

(Testimony of E. C. Woods.)

Q. And what about Santa Cruz cargo that reached the docks, or reached the warehouses, what about the handling of that cargo?

A. It wasn't handled.

Q. Why wasn't it handled?

A. Because the warehousemen had to handle it and they weren't going to break their own union.

Q. And why wouldn't the union men go in and out of the plant, the men that were not members of the warehousemen's union?

A. For the simple reason they had Finks in there working.

Q. What do you mean by "Finks"?

A. Some strike breakers that go in and take a man's job.

Q. Now you say that on the docks at the warehouses, the cargo wasn't handled by the men bebecause they were members of the same union, that is the Local 38-44 that you represent; is that correct?

A. That is correct. [407]

Q. How about on the docks in San Francisco? The warehousemen's union, as I understand it, differs or is a different local than the stevedore's union; is that correct?

A. The cars are still loaded by warehousemen.

Q. Am I correct in assuming that 38-44 is one union, or one local, and 38-79 is another local?

A. That is true.

Q. And 38-44 comprises the warehousemen?

A. They have to unload the cars onto the dock.

(Testimony of E. C. Woods.)

Q. Just take it step by step. The 38-44 are warehousemen?

A. Yes sir.

Q. They do the car unloading you say?

A. Yes sir.

Q. And then the movement from the dock to the ship is handled by stevedores; is that correct?

A. That is right.

Q. And, as a matter of fact, the merchandise of the Santa Cruz Fruit Packing Company that was on the dock, loaded out of cars, was not handled by the stevedores, was it?

A. No sir.

Q. And why not?

A. Because it is a sister local and they meant to help us.

Q. Who did you talk with in connection with Local 38-79 about the matter of your desire to have help from the sister local in connection with the Santa Cruz Fruit Packing [408] Company?

A. Taken up with the meeting before the membership.

Q. The membership of 38-79?

A. Yes sir.

Q. And was any action taken?

A. Yes sir.

Q. What action was taken?

A. They agreed not to work it.

Q. The members of 38-79 agreed not to work Santa Cruz cargo, is that correct?

A. Yes sir.

(Testimony of E. C. Woods.)

Q. They agreed not to—And by "work it," you mean handle it, that is, the unloading from the car to the dock and from the dock to the ship; is that correct?

A. Yes sir.

Q. And did you take it up with any other meeting of any other locals of the I. L. A.?

A. The bargemen.

Q. And did they take any action?

A. Yes sir.

Q. What action did they take?

A. They wouldn't load it.

Q. When was that taken up with Local 38-79 at this meeting, that is, with reference to the time of the initiation of these men on this Wednesday evening? According to your [409] best judgment was it within a few days afterwards, or immediately?

A. Yes sir, right away. All these things were taken up at the first meeting. I don't recall just when the first meeting was.

Q. Within a week anyway?

A. Yes sir.

Q. Now, in addition to taking the matter up with the locals that you have referred to, and also with the Labor Council in Oakland, the Teamsters Local in Oakland, and I understand the Teamsters Local in San Francisco, is that correct?

A. Yes sir.

Q. Do you know whether the Teamsters Local, either in Oakland or in San Francisco, took any action in so far as the request was concerned for cooperation?

(Testimony of E. C. Woods.)

A. The Teamsters in Oakland did not never go in there. The Teamsters in San Francisco never went in there.

Q. That is, your answer is that you know the ultimate fact that they didn't go in, but you don't know whether they took any official action in meetings, or anything of that kind, or do you know?

A. They had their orders, sir, not to go in there, and they must have taken official action.

Q. From whom did they have their orders?

A. The business agent was out there with me nearly all the [410] time when I was there.

Q. What business agent was that, whom do you mean?

A. I don't recall his name now. He was there on an interview with me with Mr. Huddleson.

Mr. Edises: Mr. Jackson?

The Witness: Yes sir.

Q. (By Mr. St. Sure) And Mr. Jackson, you understood to be a business agent of Local 70, the Teamsters' union, was there with you at the plant, and you say he gave orders to union teamsters not to go into the plant?

A. Yes sir.

Q. And you heard such orders given?

A. I did.

Q. Now, was anything done to take up the matter of the Santa Cruz Fruit Packing Company cargo or merchandise being declared hot, with locals anywhere else on the Coast or elsewhere in the country?

(Testimony of E. C. Woods.)

A. The teamsters of San Francisco.

Q. Any place outside of the San Francisco Bay area that you know of?

A. Sacramento.

Q. And with whom was it taken up there?

A. The Bargemen and the Teamsters.

Q. And was any action taken by the locals at Sacramento?

A. Yes sir. [411]

Q. What action was taken?

A. They wouldn't touch it.

Q. Was anything done, do you know, to contact or discuss the situation with members of the Railroad Brotherhoods or any of those unions?

A. We never went very far into the Railroad Brotherhoods for the simple reason that we knew that they would have to refer it back so far, and it takes months to get any action through the Railroad Brotherhoods, and that is the reason we didn't take it up through them.

Q. Did you know of the actions of a Mr. Moore, or Mr. Heide in connection with what was claimed to have been an attempt to derail a switch engine there at the Santa Cruz plant?

A. If I may be allowed, that is out in this case and——

Mr. Edises: Just a minute, Mr. Woods. You can answer the question yes or no. If you know something of your own knowledge, you can testify to it; otherwise you don't know anything about it.

A. I don't know anything about it.

(Testimony of E. C. Woods.)

Q. (By Mr. St. Sure) Do you know Mr. Moore?

A. I do.

Q. Has he any connection with Local 38-44 of the I. L. A.?

A. Yes sir.

Q. What connection did he have at the time in the month of [412] August when this situation existed at the Santa Cruz plant?

A. I don't know anything about it.

Q. Well, I mean what connection did he have with the union. Was he simply a member of the Local, or did he have any office?

A. He was a member of the Local.

Q. Did he have any particular duties assigned to him in connection with the Santa Cruz plant?

A. Not any more than any other part of the Local, no.

Q. Was he assigned to picket duty there?

A. He was a member of the strike committee; that is all.

Q. A member of the strike committee?

A. Yes.

Q. And as a member of the strike committee what were his duties in connection with the situation at the Santa Cruz Fruit Packing Company?

A. His duties would be the same as they would be for anything else; that is all.

Q. Well, I don't know what his duties are for anything else, Mr. Woods. Did he have anything at all to do, or was he supposed to be there at any

(Testimony of E. C. Woods.)

particular time, or was he supposed to do anything while he was there?

A. He wasn't supposed to be there only when he wanted to go there—that is all—the same as any other member of the Local. [413]

Q. Why did you have a strike committee? I mean, what was the purpose of that committee?

A. They were to take up the affairs of the strike in the hall when they were called on.

Q. And do you know a Mr. Paul Heide?

A. Yes sir.

Q. That is spelled H-e-i-d-e?

A. Yes sir.

Q. What was his status? Was he also a member of this strike committee?

A. Yes.

Q. And did you see Mr. Moore or Mr. Heide out there at the Santa Cruz plant at any time?

A. I have not.

Q. You didn't see them in that vicinity at all?

A. No sir.

Q. At any time?

A. No sir.

Q. Were you likewise a member of the strike committee?

A. All officers are; they are permitted to sit in on them. They are not a member of them.

Q. Did you sit in on the meetings of the strike committee?

(Testimony of E. C. Woods.)

A. Not at this particular time, no; not of this action. In other words, in connection with the Santa Cruz action of the strike committee, I never got a chance to sit in on [414] those meetings. I was too busy otherwise.

Q. Do you know a man by the name of Moran, who is a member of the Local Teamsters' Union?

A. Yes sir.

Q. And was he out there at the Santa Cruz plant on any occasion that you know of?

A. No, I don't remember, don't recall seeing him out there.

Q. Did you ever talk with him concerning the situation at the Santa Cruz plant?

A. Lots of members I have talked to concerning it. I don't recall any conversation.

Q. Have you any knowledge concerning the incident when Mr. Moran participated in the alleged kidnaping of a driver from the Santa Cruz plant, and as a result of which there is a felony warrant out for him?

Mr. Edises: I want to offer the objection to the question in that it apparently assumes matters which are not in evidence.

Mr. St. Sure: I would be glad to produce the warrant if necessary. The sheriff's office will bring it over.

Mr. Edises: I personally have no knowledge of these facts you refer to, Mr. St. Sure. I think if you ask the witness a question not framed in that particular form, that he might testify to whatever knowledge he has of activities along that line. [415]

(Testimony of E. C. Woods.)

Mr. St. Sure: I take it the Examiner can distinguish that my statement is for the purpose of identifying this particular Mr. Moran and isn't evidence of the fact there is a warrant out.

Mr. Edises: I don't want to start the practice of objecting but it seems we are getting a little off the track. I fail to see that this particular line of testimony has any particular relevance to the issues in this case. If it has, I have no objection to its going in.

Trial Examiner Traynor: They seem a little afield. The relevancy may come out as further questions are asked. We will wait for the answers.

Mr. Edises: I would like to have Mr. St. Sure indicate the purpose for which he is asking these questions. If their relevance appears, I will withdraw my objection.

Mr. St. Sure: It is alleged in the complaint, among other things, that the management coerced the employes and intimidated them—I forget just the language—and also that the reason for discharge and failure to re-employ was on the basis of union activities, in the sense that they joined the union. I would like to develop the picture, if we may, as to what the situation was there and what pressure, if any, was exercised and from which side it came. That is my only thought in the matter.

Mr. Edises: That would probably be legitimate, but brings in Mr. Moran, or the teamsters—— [416]

Mr. St. Sure (Interrupting): They called upon the teamsters and officially obtained their aid, and a

(Testimony of E. C. Woods.)

delegate or business agent of theirs, Mr. Woods says, was there most of the time. Mr. Moran was a member of this union and he did participate in some of these things that happened up there.

Mr. Edises: I fail to see how anything brought out, by any stretch of the imagination, can be chargeable to the union, but go ahead and question him on it if you wish.

Trial Examiner Traynor: You may proceed, Mr. St. Sure.

Mr. St. Sure: Read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter as above recorded.)

Mr. Edises: As to that question, I will have to object unless it is established by the laying of a foundation that in some way or other the union concerned in this proceeding had some connection with that incident, if it occurred.

Mr. St. Sure: I will withdraw the question for the time being.

Q. (By Mr. St. Sure) Have you any knowledge concerning an incident which occurred wherein a driver and other employes of the Santa Cruz Fruit Packing plant went to a commercial warehouse to obtain delivery of some merchandise and were assaulted by any of the persons who were there on the picket line, or assisting the picket line at the Santa Cruz plant? [417]

A. Could you name any definite place, or put that question a little more plainly?

(Testimony of E. C. Woods.)

Q. I am referring to a matter which I understood occurred the day of—or the day before this incident which was testified to concerning the truck going up to the kitchen there that night when the Santa Cruz men and the members of the picket line had a "downey-brook" there?

A. I would like to answer thoroughly. There was no trouble that day or the day before that, with any one. In fact, we were very rushed right then with men and we had pulled nearly every man off the picket line and put them on the warehouses, and nearly every one was working and we had about five or six men out there that day; and I know that there was no trouble anywhere the two days previous to that kitchen raid.

Q. When you say you know there was no trouble, what you mean, I take it, is as far as you know you have no knowledge of any trouble?

A. I have no knowledge of it, and I don't know where they could get the men to have any trouble with, because they were all working.

Q. Now, after this time when the men were replaced out there at the Santa Cruz Fruit Packing Company you told us that you on one occasion went to Mr. Huddleson's office with Mr. Bridges, and Mr. Jackson, and he was the man from the teamsters' union?

A. Yes sir. [418]

Q. Have you seen this purported transcript of a conversation that occurred at that time, which is here in evidence and marked Board's Exhibit No. 2? Have you seen this?

(Testimony of E. C. Woods.)

A. I have seen it. At this time may I be permitted to know why that was taken?

Mr. Edises: Just a moment, please. Don't volunteer any testimony. If any objection is to be made I will make it for you. Just answer the questions direct and without volunteering anything.

The Witness: I would like for you to ask that question for me.

Mr. Edises: That will be brought out, if necessary, at the proper time.

The Witness: All right.

Q. (By Mr. St. Sure) My purpose was to shorten this matter of questioning. Have you read it over and do you know whether it accurately states what was said at that time?

A. To the best of my knowledge, yes.

Q. How did Mr. Bridges happen to be present at that conversation, Mr. Woods?

A. I asked him to go there.

Q. And why?

A. Because I was trying all means that I possibly could to get those men back to work.

Q. And how did you—withdraw that—what was your belief [419] concerning Mr. Bridges' ability to assist you in that? I mean what did you think he could do?

A. I didn't seem to be able to get Mr. Huddleson to put the men back to work. I thought maybe I could try to get someone else that maybe could get to him and get them back to work.

Q. Why did you select Mr. Bridges?

(Testimony of E. C. Woods.)

A. Mr. Bridges is a very good talker and he is a very honest and capable man.

Trial Examiner Traynor: We will take a recess now for five minutes.

(At this point a recess was taken after which proceedings were resumed as follows:)

Trial Examiner Traynor: You may proceed.

Q. (By Mr. St. Sure) You wanted, apparently, to make some statement concerning the reason why that conversation was taken down. I will ask the question: why was it taken down? Was there some incident that occurred that you wanted to relate?

Mr. Edises: I think that he would hardly be the person to answer that question, Mr. St. Sure..

Mr. St. Sure: He wanted to volunteer something. I wanted to hear what it was; that was all.

Mr. Edises: I would prefer that he do not answer the question. It is not responsive to anything that is pertinent to his testimony. It simply clutters up the record. [420]

Mr. St. Sure: I assume we want to get at the facts. If there is something here in the background I would like to know what it is, what Mr. Woods has in his mind. Apparently, he was anxious, a moment ago, to volunteer something. I would like to hear what it is.

Mr. Edises: My objection is that the answer, or the statement, is unresponsive.

Mr. St. Sure: My question is what he wanted to volunteer, and if it isn't responsive or material we can strike it, or the Examiner can disregard it. We would like to get at the facts.

(Testimony of E. C. Woods.)

Mr. Edises: I think it is unimportant.

Mr. St. Sure: Perhaps the Examiner can best judge that.

Trial Examiner Traynor: You withdraw your objection?

Mr. Edises: Let him answer it.

A. The only thing that I wanted to bring out is this: That when we went to Mr. Huddleson's office, if I may be permitted to explain this, Mr. Huddleson's office is a long office; and when we went in there it seems it was all pre-arranged. He knew we were coming. He sat so he was facing his stenographer when we were all sitting with our backs to the stenographer. After we got seated the stenographer came in and sat down and the transcript was taken unbeknown to anyone.

Q. (By Mr. St. Sure) You had no objection to it being taken down?

A. No, I merely wanted to explain how it was taken; that is all. [421]

Q. The way I understand it is that the girl came in and sat down and took it down and there was no discussion about it at the time and no objection made to it, and, apparently, it is an accurate transcript, isn't it?

A. That is just what I wanted to explain. It is one-sided. He was asking the questions to try and draw something out of us to put into the transcript and to use as a discrimination against us, and we didn't know anything about it.

(Testimony of E. C. Woods.)

Q. You mean—apparently the conversation was accurately reported, wasn't it?

A. I don't try to say anything that isn't true.

Trial Examiner Traynor: He already answered the question.

Mr. St. Sure: He has.

Q. (By Mr. St. Sure) Now, did you discuss with Mr. Bridges, or with Mr. Jackson, before you went to that meeting, what statements were to be made and who was to do the talking?

A. No sir.

Q. Pardon me?

A. No sir.

Q. Page 6 of the transcript, about the middle of the page, appears this statement made by Mr. Bridges:

"Our position is very strong and we can enlist enough force to get the men back on the job, although we have tried to avoid it."

Do you know what force he had in mind, what the purpose [422] of that statement was?

Mr. Edises: I am going to object to any questions which will ask Mr. Woods the meaning of Mr. Bridges' statements.

Mr. St. Sure: It is asking for a conclusion. I will withdraw it.

Mr. Edises: The transcript itself is the best evidence.

Mr. St. Sure: I think that is correct.

(Testimony of E. C. Woods.)

Q. (By Mr. St. Sure) Now, on the first page of the transcript, about the second statement made, the first statement made by Mr. Huddleson, there is the following:

"I told you that we had no particular grievance with most of these boys out there, but some of these fellows conducted themselves in such a manner after they were out that I won't have them working for us."

The transcript then says:

"Mr. Woods: Yes, I know it."

Did you make that statement at that time?

A. I don't recall just exactly what statement was made, just referring to a couple of words in the transcript.

Q. Did you know of the conduct that Mr. Huddleson was complaining of at that time, the conduct of the men after they were out?

A. No sir.

Q. Did you know of any complaint that had been made con- [423] cerning any of the men going to Mr. Huddleson's home and, during the early hours of the morning or late at night, making disturbances there?

A. No sir.

Q. Did you ever hear of that at all up to this time?

A. No sir.

Q. In this very conversation, didn't Mr. Huddleson, at some length tell you—wait a moment and I will see if I can find it. (Referring to Board's Ex-

(Testimony of E. C. Woods.)

hibit No. 2) Don't you recall in that conversation Mr. Huddleson saying, and I am reading from page 7, about the middle of the page:

"Let me ask you something, Mr. Bridges. If you had men that had been working for you steadily for years coming around and terrorizing your home in the middle of the night, would you take them back on the job? Just put yourself in my position for a moment. How would you feel about it?"

Do you recall that statement being made?

Mr. Edises: It seems, Mr. St. Sure, that the transcript is the best evidence of what was said.

Mr. St. Sure: Yes, but I have a right to test the witness' recollection. He stated he hadn't heard at all about the men terrorizing or coming to the home of Mr. Huddleson at night.

Mr. Edises: He said prior to that interview.

Mr. St. Sure: I said up to this time. [424]

Q. (By Mr. St. Sure.) Did you misunderstand me?

A. I did, in a way. I never heard it from the men, and I don't believe the men did it.

Q. My question was did you ever hear it from Mr. Huddleson, that is, the statement that it had occurred?

A. By Mr. Huddleson, yes; but I understood you to say from the men.

Q. You do now recall Mr. Huddleson, on this occasion, did make that statement concerning the men who had worked for him, and were then out, had gone to his home at night, do you recall that?

(Testimony of E. C. Woods.)

A. I do.

Q. Now, did you know of a subsequent, or later meeting between Mr. Huddleson and Mr. Spooner, of the Central Labor Council, and Mr. Real, of the Teamsters' Union?

A. No sir, I didn't know of it.

Q. Did you know, Mr. Woods, whether or not—withdraw that—did you see, or did you have, or do you have any knowledge concerning any letter written by Mr. Huddleson to Mr. Spooner or Mr. Real concerning the situation there at the Santa Cruz plant at the time that you had this meeting with Mr. Bridges and Mr. Huddleson and Mr. Jackson?

A. No sir.

Q. As far as you know that matter, the contents of a letter or that letter was not called to the attention of yourself [425] or the officers of the union at that time?

A. No sir.

Q. Did you have any contact with, or discussion with Mr. George Real or Mr. Spooner following this meeting with Mr. Bridges, Mr. Jackson and yourself and Mr. Huddleson?

A. I was up to see Mr. Real several times, and I was up to see Mr. Spooner several times.

Q. Did you, on any occasion, ask them, or suggest to them or discuss with them that they go and call on Mr. Huddleson?

A. No sir.

Q. You don't know whether they did or not?

(Testimony of E. C. Woods.)

A. No sir, I do not.

Q. Can you tell me, Mr. Woods, over how long a period of time the situation continued that you described, that is, where members of affiliated unions or sister locals of the I. L. A., refused to handle or work merchandise of the Santa Cruz Fruit Packing Company?

A. I don't recall just how long.

Q. Pardon me?

A. I don't recall just the length of time.

Q. It was a matter of some weeks, wasn't it?

A. Yes sir.

Q. And what occurred, if you know, to cause the removal of the direction or the order that that cargo should not be handled? [426]

A. Repeat that.

Q. I will withdraw that and reframe it. Later on, that is, after some weeks had gone by, the cargo was again handled wasn't it?

A. Yes sir.

Q. What brought about the change in attitude, can you tell me?

A. The unions themselves were responsible for that, I am pretty sure.

Q. Did the ruling of Judge Sloss, to the effect that the refusal to handle the cargo was a violation of the October 1934 Arbitration Award have anything to do with it, do you know?

A. It may have.

Q. You know that it did, don't you?

A. I can only speak for my own union.

(Testimony of E. C. Woods.)

Q. Well, in so far as your own union is concerned, did it have anything to do with this decision to handle the cargo thereafter?

A. No, we didn't handle it.

Q. Pardon me?

A. We didn't handle it. We gave permission for it to be handled; that is all.

Trial Examiner Traynor: Can't you answer the question?

The Witness: I did as near as I could. We didn't handle the cargo, our union didn't. I am not speaking for [427] the rest of them.

Q. (By Mr. St. Sure) Put it this way: Did your determination, that is, a decision of your union to give permission, you say, for the others to handle it, have any relation to the Sloss ruling?

A. We didn't want no other union to lose its agreement on account of us.

Q. I take it from that answer that your decision to give permission, as you say, did have reference to and was affected by the Sloss ruling, is that correct?

A. Yes sir.

Q. Do I understand that without your having given permission to the other unions to handle the cargo, that the situation would have continued and the Santa Cruz cargo would have been hot?

A. It may have.

Mr. Edises: I think that that question is speculative and hypothetical and that, under the circumstances, the answer ought to be stricken.

(Testimony of E. C. Woods.)

Trial Examiner Traynor: I think so. The answer to that question may be stricken.

Q. (By Mr. St. Sure) Why did your union communicate to other unions the fact that those other unions had your permission to handle this cargo?

A. Why did the other unions ask us—state that again? [428]

Q. Either way—why did you communicate to the other unions that they had your permission to handle the cargo, or why did they ask you for permission, whichever way it happened?

A. I answered that question.

Q. May I ask you to answer it again. Perhaps I didn't get the answer clear.

A. We didn't want any union to subject itself to the losing of its contract or agreement on the account of another union.

Q. My point, the point of this question was this: I am asking now from the point of view of your union, why did you feel it necessary to communicate to the other unions the fact that they had your permission to handle this cargo?

A. That question, I think, was answered very plainly.

Trial Examiner Traynor: Please answer it again.

The Witness: That question, the way it is put, and the way I understand it, you want me to tell you why we gave permission to the other unions to handle the cargo. Well, the reason was that Judge Sloss passed the decision the way he did and we

(Testimony of E. C. Woods.)

gave the other unions permission to handle the cargo.

Q. (By Mr. St. Sure) Well, we are talking somewhat at cross purposes, and perhaps it is because of the fact that the question I previously asked did call for your conclusion. The thing I am getting at is this: I understand clearly from your statement that the reason you granted the permission was because you didn't want the other unions, in the face of this [429] award, to be violating any agreement.

A. True.

Q. But the purpose of my question is, why was it necessary for your union, which is merely an affiliate of the other unions, to give them permission before they could resume handling the cargo? In other words, what is the relationship, or what was the relationship, at that time, or what was the understanding between your union and the sister locals, that made it necessary for you to give them permission before they resumed the handling of the cargo?

A. The unions all try to work together as much as possible.

Q. And they had been working together in this situation?

A. They had.

Q. By refusing to handle the cargo, is that correct?

A. Yes sir.

Q. That is, whether the men that had the actual handling of it were members of 38-44 or 38-79, or 38-100, or any of the locals?

441

(Testimony of E. C. Woods.)

A. That is true.

Q. Do you know whether anything was done to inform the members of the various unions, that is, the teamsters and the various locals of the I. L. A., of the names of the brands under which Santa Cruz Fruit Packing Company's products were canned or packed?

A. All the brands were given to all the Locals. [430]

Q. Pardon me?

A. All the brands were given to all the Locals.

Q. And for what purpose? I mean why was that done?

A. So they would know what was Santa Cruz and what wasn't.

Q. And I assume that for the purpose of making sure they didn't handle Santa Cruz brands that might be under some name other than Santa Cruz, is that correct?

A. No sir.

Q. Pardon me?

A. No sir; it was to be sure they didn't get something that wasn't Santa Cruz.

Q. I don't understand you on that. Would you explain that answer, please?

A. Well, in other words, it was to, so that they wouldn't—

Q. (Interrupting) Hold up some body else's merchandise?

A. Yes.

(Testimony of E. C. Woods.)

Q. It amounts to the same thing but we were talking about it in opposite directions. But in any event, it was for the purpose of identifying everything that came out of the Santa Cruz plant, is that correct?

A. Yes sir.

Q. Now, you mentioned that you notified the members of the sailors' union at the time that the Santa Cruz cargo was declared hot. Did that union, or did any of the locals of the sailors' union take any action in connection with the [431] matter, do you know?

A. Yes sir.

Q. What action did the sailors' union take?

A. They wouldn't handle the cargo.

Q. Well, what handling of the cargo did the sailors have? I mean do you know what that entailed or what that involved, that refusal on the part of the sailors to handle the cargo of the Santa Cruz plant?

A. Yes. On the steam schooners, in the hold in the ship the stevedores worked.

Q. How about in the deep sea ships, do you know what action, if any, they took with reference to handling of Santa Cruz cargo on deep sea ships?

A. On the deep sea ships they didn't handle cargo.

Q. Did they take any action as to the handling of that cargo, do you know?

A. They couldn't take it because they don't handle it; it was only on the schooners.

(Testimony of E. C. Woods.)

Q. Now, do you recall, and do you know, Mr. Woods, that during the time that this hot cargo situation continued that members of 38-79 refused to load or unload, or handle Santa Cruz merchandise when requested to do so by their employers?

A. What is that again?

Mr. St. Sure: Please read the question, Mr. Reporter.

(The question referred to was read aloud by the reporter, as above recorded.)

A. Sure, they refused. [432]

Q. (By Mr. St. Sure) And likewise the warehousemen members of Local 38-44 refused to handle it, is that correct?

A. Yes sir.

Q. And during the time, that is, from say 7 of August until the time the hot cargo ban was lifted, the picket line was maintained or kept on there at the Santa Cruz plant all during that period, wasn't it?

A. Yes sir.

Q. And why was the picket line removed?

A. After the ban was lifted?

Q. Yes.

A. There wasn't any need of having a picket line there. If they have a picket line there the teamsters wouldn't go through, or any other union man.

Q. Well, had the situation changed in so far as your own union was concerned with reference to the Santa Cruz Fruit Packing Company when the hot cargo ban was lifted?

(Testimony of E. C. Woods.)

Mr. Edises: Will you read that question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.)

Mr. St. Sure: I will withdraw that and ask this question.

Q. (By Mr. St. Sure) At the time that the hot cargo ban was lifted the employes who were out at Santa Cruz were still out, weren't they? [433]

A. Yes sir.

Q. And you had reached no agreement with the management of the Santa Cruz plant?

A. No.

Q. Was the picket line maintained before the time of the Sloss ruling for the purpose of—for what purpose?

A. The picket line was maintained for what purpose?

Q. Yes?

A. The same as any other picket line remained, I suppose, to try to get the men back.

Q. How can pickets assist in doing that?

A. By these affiliated unions, I suppose.

Q. Well, I am asking you for information, Mr. Woods. I am asking just what the pickets were to do and what their purpose was in being at the Santa Cruz plant from the time that the men were out at work until the time that the Sloss ruling was made, at which time the hot cargo order was lifted. I mean, why were the pickets there in that interval?

A. The pickets were there to notify all people

(Testimony of E. C. Woods.)

going in and out of there that there was a lockout at the Santa Cruz Fruit Packing Company, and to try to get them, through a peaceful method, to not go in and take some working man's job that had been locked out and put on the street.

Q. And that was the only purpose for the picket line being there? [434]

A. That was the purpose.

Q. And after the Sloss ruling the men were still out of work, is that correct?

A. Yes sir.

Q. And the same reason existed, didn't it, for the pickets to be there and notify all people that these men were locked out, and after the Sloss ruling?

A. It was taken up, put up with the Wagner Bill and put into their hands at that time and the pickets were taken off awaiting this trial, I suppose, whatever you call it.

Q. Well, was there any connection with the—what I am getting at, the removal of the pickets and the Sloss ruling—

A. (Interrupting) Was there any connection?

Q. Yes.

A. Well, after the Sloss Bill was put into effect, why, it was put into the hands of—in other words, the complaint was turned into the Wagner Bill, and there wasn't any more use for pickets out there. They just waited the action of the Wagner Bill.

Q. Well, you say the use for which the pickets were placed originally was to peacefully notify persons going in and out of the plant that you re-

(Testimony of E. C. Woods.)

garded conditions there as unfair to your organization, is that correct?

A. True.

Q. And that same condition existed and continued, from your [435] point of view, after the Sloss ruling and even up to this time, is that correct?

A. It still contains, yes; but we figured that after it was put into the Sloss Bill that they would handle it.

Mr. Edises: By the Sloss Bill what do you mean?

Mr. St. Sure: I assume that he means under the Wagner Bill, the Regional Labor Board.

Q. (By Mr. St. Sure) Was there any reason why the matter was not referred by your union to the Regional Labor Board before the time of the Sloss award?

A. We were trying every way that we possibly could to have a peaceful settlement without taking it any further.

Q. Well, you mentioned at the outset that one of the reasons that the teamsters' union was notified about your view of the situation was so they would not go into or out of the plant. That was your reason for notifying the teamsters' local, wasn't it?

A. Yes sir.

Q. That was one reason why,—or the reason why the picket line was maintained thereafter?

A. Yes sir.

Q. What has occurred to change the situation in so far as your union is concerned, if anything has

(Testimony of E. C. Woods.)

changed it, with reference to the teamsters going into and out of the Santa Cruz plant at this time?

[436]

A. After it was put into the hands of the Wagner Bill we had taken the pickets off, for the simple reason that the Wagner Bill was to handle it then.

Q. Well, the pickets themselves didn't physically stop these truck drivers, did they, as I understand it?

A. No sir.

Q. And the only thing that they were there for was to remind the union teamsters that conditions were not fair within the plant, from your point of view?

A. That is true, sir.

Q. And those same conditions exist now, from your point of view?

A. Well, it seems to me that there are two ways of taking that. We have no pickets there now, as I told you before, because it has been put in the hands of the Wagner Bill; that is why that the pickets were taken off, and the result is waiting the answer of the Wagner Bill.

Q. At the time the pickets were removed, did you send notice or information to the Teamsters' Union as to what policy they would pursue, or what you would suggest they do from that time on?

A. No sir.

Q. Did you advise them that the picket line was being removed?

A. Yes sir. [437]

(Testimony of E. C. Woods.)

Q. Did you advise them to continue or not to continue to stay away from the plant?

A. We did not.

Q. Didn't give them any advise one way way or the other?

A. No sir.

Q. Did you inform them whether or not your controversy with the Santa Cruz Fruit Packing had been adjusted, or whether it had not?

A. We advised them it was being taken up by the Wagner Bill.

Q. At the time that Mr. Anger came to you in connection with the matter of the employes of the Santa Cruz Fruit Packing Company, who were working in the warehouse and affiliating themselves with your local, did you know what the conditions of work were, that is, with relation to wages and hours in other canneries in this locality, except those that you mentioned the other day, Rosenberg, Libby, McNeill & Libby, and Plant 48?

A. That is all, sir.

Q. You didn't know what the conditions were in the other canneries, say Hunt Brothers or Ball's, or any of the rest of them?

A. No sir.

Q. Did you make any inquiry or attempt to find out what the conditions were in those other canneries. [438]

A. I only knew the conditions of the plants that we had.

(Testimony of E. C. Woods.)

Q. Did you know, for instance, how many other canneries there were in Alameda County?

A. No sir.

Q. You didn't know what they were paying, and, if there were other canneries, what their scale was?

A. No sir.

Q. Or whether Santa Cruz was higher or lower, or where it was with reference to the others, except the ones you say you had an agreement with?

A. No sir.

Q. Did you afterwards, at the time the contract or form was forwarded to Mr. Huddleson, make any inquiry or get any knowledge concerning those matters, that is, what the conditions were in other canneries, and the number of other canneries there were, and things of that kind?

A. Only from some of the information that I got from some of the canneries that we had.

Q. You mean Libby, McNeill & Libby, Rosenberg and Plant 48?

A. Yes sir.

Q. Mr. Huddleson told you, I believe you stated, that one of the objections that he had was being singled out for an increase in wages, and which his competitors were not paying—didn't he say something of that kind to you?

A. Yes sir. [439]

Q. At that time, did you then make any inquiry to see whether or not he was paying about the same rate as the other canneries were paying, or what the other canneries were paying? Did you make any

(Testimony of E. C. Woods.)

effort to find out about that situation that he complained of?

A. No sir.

Mr. Edises: Will you read the question, Mr. Reporter?

(The question referred to was read aloud by the reporter, as above recorded.)

Q. (By Mr. St. Sure:) Did the rules, regulations or laws of your organization, Mr. Woods, state whether or not a man who is a member of your union can work in the same plant or place with men who do not belong to your organization? I mean within the same warehouse, for instance?

A. There is no objection to working with a non-union man.

Q. Is there any objection to working with a man, for instance, who has worked during the period since the 6th of August at the Santa Cruz plant, and where the men have worked, as you would say, under strike conditions?

Mr. Edises: I submit that the question might be framed in a somewhat more specific fashion.

Mr. St. Sure: You frame it. I think you have in mind what I want.

Mr. Edises: I am aware of what you expect to elicit from the witness but the question would cover a number of [440] different situations as to each of which situations conceivably there might be a different attitude.

Mr. St. Sure: I will withdraw the question.

(Testimony of E. C. Woods.)

Q. (By Mr. St. Sure) Is there any rule, regulation or law, written or unwritten, of your organization, Mr. Woods, which says that members of your organization should not work in the same warehouse, we will say for instance, with the employes of Manuel Gomez, who now has the contract with the Santa Cruz warehouse?

A. There is no law in the union, no. The union might have an objection to holding some of the men off and leaving some of these union men out; the men themselves, but there is no objection to working with a non-union man.

Q. And that answer, I take it, stands even though a non-union man has worked during the period of time they have been going through at the Santa Cruz plant, and which we may refer to roughly as under strike conditions?

A. Yes sir. As long as the union men are put back, I don't see any objection. The union won't have objection to that man working.

Q. Well, did you have any feeling in connection with matters of that kind? I mean men who have been employed, say, as strike breakers?

Mr. Edises: I submit the question as to whether he has any feeling in the matter is improper. [441]

Mr. St. Sure: I have a purpose in asking that because the contract submitted specifically refers to that matter and that is why I am asking it in this rather informal fashion. I will withdraw that and ask another question.

(Testimony of E. C. Woods.)

Q. (By Mr. St. Sure:) You are familiar with this contract, or the form submitted to Mr. Huddleson, are you not?

A. Yes sir.

Q. And why do you have in that contract form the statement that the employer should agree that he will not intentionally employ any non-member of Local 38-44 during the period of one month—and that is for the purpose of the contract and that, after the one month period, further negotiations were to be had—who has previously worked as a strike breaker? Why it that in the proposed contract?

A. That is put in there for the reason not to leave a union man out and put a strike breaker in in his place. That is what that is put in for.

Q. I am going to read the entire paragraph so there will not be any misunderstanding. I am reading paragraph (c) of the Proposed Contract, page 3:

"The employers will for one month from date hereof, if none of their regular employes is available, employ as extra help members of Local 38-44; provided, however, they retain the right to employ an occasional man who is not such a member. Employers agree that they will not intentionally [442] employ any non-member of Local 38-44 during the period of one month who has previously worked as a strike-breaker. At the end of the month mentioned above, the parties to this contract shall appoint committees, who will immediately confer and discuss the advisability of continuing the arrangement out-

(Testimony of E. C. Woods.)

lined in said paragraph. If, in the opinion of the party of the second part,"—that is the union—"an employe of one of the employers has been unfairly discharged, the employers agree that they will, when called upon, discuss his discharge through the grievance committees hereafter referred to."

You say that reference in the agreement not to intentionally employ a non-member of the union who had worked as a strike-breaker had reference only to retaining strike-breakers at the expense of members of the union, is that your understanding of it?

Mr. Edises: Just one moment. It seems that the contract is pretty clear; it is in writing and the meaning of it, under the circumstances, ought to be for the Examiner if there is any question about it.

Mr. St. Sure: I am not asking for his interpretation of the contract. I am asking for Mr. Woods' understanding of it, in view of the fact that he submitted it and in view of his present statement that there is nothing at all from the union point of view to working with a strike-breaker. I want to know why it is in the contract. He is the man author-
[443] ized to negotiate this matter, as I understand it.

Mr. Edises: That is calling for the interpretation, is it not, of this witness?

Mr. St. Sure: I am not asking for his interpretation, but his own views of the matter.

Trial Examiner Traynor: As to why that was inserted in the contract? I think he can be asked why

(Testimony of E. C. Woods.)

that provision was inserted in the Proposed Agreement.

The Witness: It didn't appear he was asking that particular question.

Mr. St. Sure: Pardon me?

The Witness: It didn't appear to me you were asking why that was inserted in the contract.

Q. (By Mr. St. Sure:) I don't want to have any misunderstanding. I will ask you, having read the whole paragraph—perhaps it is the fairer thing to do than ask the question originally—having heard the paragraph read, now I will ask you why that particular sentence that I previously referred to, that the employer would not intentionally employ any non-member during the period of one month, who had previously worked as a strike-breaker, why that was in the contract?

A. As I stated, that was put in the contract so the union men would all have the preference first.

Mr. St. Sure: I take it that, ordinarily, I must be satisfied with the answer. I don't want to pursue it any [444] further anyway.

Q. (By Mr. St. Sure:) I notice the original letter which is Board's Exhibit No. 4, copy of it, which was the letter of transmittal accompanying the formal contract, which was signed by Mr. Daniel V. Flanagan—he was an officer of 38-44?

A. He was the secretary.

Q. He is still the secretary?

A. No sir.

(Testimony of E. C. Woods.)

Q. Did you discuss with Mr. Flanagan the matter of his sending that form of contract to the Santa Cruz Fruit Packing Company?

A. I told him to.

Q. Now, the next letter, copy of which is Board's Exhibit No. 5, dated August 10th, that letter you sent yourself? I am simply comparing the originals. Apparently, the copies are in order. Following the time that you went to Mr. Huddleson's office with Mr. Bridges and Mr. Jackson—I am probably repeating myself on this but I am about to conclude my examination—did you again see Mr. Huddleson after that at all?

A. After I went with Mr. Bridges?

Q. Yes.

A. Not as I recall.

Mr. St. Sure: I think that is all. I don't want to keep Mr. Woods here after the adjournment, unless counsel desires to take him on some other matters. So I have completed my examination at this time. [445]

Trial Examiner Traynor: We will recess until 2 o'clock.

(Whereupon, at 12:00 o'clock noon a recess was taken until 2:00 o'clock p. m.)

After Recess.

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

E. C. Woods, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

(Testimony of E. C. Woods.)

Redirect Examination.

Q. (By Mr. Edises) Mr. Woods, during your cross examination you were asked several questions in regard to whether or not written agreements had been entered into with certain cannery warehouses, other than the Santa Cruz. As business agent of the warehousemen's union, are you in a position to state whether or not, if the Santa Cruz Fruit Packing Company had been willing to pay 62½¢ an hour you would have waived a written agreement with them?

A. I don't see any reason for why they shouldn't have done it.

Mr. Edises: What was the answer, Mr. Reporter?

(The answer referred to was read aloud by the reporter, as above recorded.)

Q. (By Mr. Edises) I should have stated, perhaps, that in the case of these other plants, according to my recollection of your testimony, your willingness to waive the written agree- [446] ment was based on the fact that they paid 72½¢ an hour, is that correct?

A. Yes sir.

Q. Which was 10¢ above the union scale?

A. Yes sir.

Q. And if Santa Cruz had been willing to have paid that would you have insisted upon a written agreement?

A. No sir.

Q. In the event that the Board should order the reinstatement of these men, and they were given

(Testimony of E. C. Woods.)

reemployment would the union put any obstacle in the way of the men returning to work?

A. No sir.

Q. Or to their doing their work efficiently as employes of the Santa Cruz Fruit Packing Company?

A. It would be to their interest to do the work better than they ever did it before.

Q. Then, I understand your testimony to be that the union would offer no obstacle of any kind to their doing their work efficiently as employes of the Santa Cruz Fruit Packing Company?

A. They would not.

Q. Was Mr. Moore or Mr. Heide, the persons referred to on your cross examination, or any other member of the strike committee or of the union, or of any affiliated union, or sympathetic union, ever given any instructions in regard to de- [447] railing any freight car or railroad equipment?

A. No sir.

Q. Or suggestions in that respect?

A. The union is very strongly against any violence whatever.

Q. How many members were on the strike committee at the Santa Cruz plant?

A. They have no particular strike committee for any particular concern. They had a permanent, at that time, strike committee set-up and I think, I am not speaking for sure, but I think there were 8 men on the strike committee.

(Testimony of E. C. Woods.)

Q. You mentioned that there was no trouble, to your knowledge prior to the kitchen raid. What raid did you have in mind?

A. The time that the Santa Cruz men brought their truck out there, the company truck, where they had the cases piled on each side and the men were concealed inside the cases, and they got to the kitchen and they dumped the cases off and rushed the kitchen with gas guns and pipes and clubs, and everything, and they broke some of the men's arms and fractured one fellow's skull and—

Mr. St. Sure: (Interrupting) Were you there, Mr. Woods?

The Witness: No, but I seen the men in the hospital.

Mr. St. Sure: I ask that this go out, if the Examiner please, as it is certainly based on hearsay, as the witness said he wasn't there. [448]

Mr. Edises: I have no objection to that. I simply want to identify the raid.

Mr. St. Sure: I will ask that the description of what occurred with weapons go out; as to the matter of injuries, if it is material we will go into that in detail.

Trial Examiner Traynor: That may be stricken out.

Q. (By Mr. Edises) The raid that you are referring to is the one described by Mr. Doyle, is it not?

A. I don't recall.

(Testimony of E. C. Woods.)

Q. You don't recall Mr. Doyle's testimony in that respect?

A. No, I don't.

Mr. St. Sure: That was the only instance, I take it, recounted. I so understand. We are willing, for the purpose of the record, unless there is some question, to state this is the one I was talking about and questioning him about.

Mr. Edises: Very well.

Q. (By Mr. Edises) Mr. Bridges is president of the local—what is it?

A. 38-79.

Q. Yes. He is president of Local 38-79, is he not?

A. Yes sir.

Q. And the longshoremen in that local were not handling Santa Cruz cargo, is that correct?

A. No sir.

Q. Was there any connection between that fact and the [449] presence of Mr. Bridges at this interview that you have testified to between yourself, Mr. Huddleson and Mr. Jackson and Mr. Bridges?

A. That was his reason for wanting to go there.

Q. Because of the fact that the men—

A. (Interrupting) His men were out.

Q. His men were affected?

A. Yes. My reason was to see if he couldn't straighten the matter out, and his reason for going there was to try to get it straightened out on account of his men being out.

(Testimony of E. C. Woods.)

Q. You testified that you informed various other unions and locals of your union, that Santa Cruz cargo had been declared cold, is that correct?

A. Yes sir.

Q. Now, what was the nature of your communication with them at the time? Did you simply inform them that it was declared cold, or were you giving them permission to handle the cargo? You stated someone stated something about permission. I believe Mr. St. Sure used the expression first. Just what was done?

Mr. St. Sure: Just a moment! I don't think that is a fair statement to say that I used the expression first. It was Mr. Woods' expression and I questioned him concerning it. I don't think it is proper redirect to say, "Did you inform them," or "Did you use the word 'permission' ". The record speaks for itself. Mr. Woods said he notified them they had [450] permission to handle the cargo. If there is any question about it I suggest you read the record back because I don't like the implication that I first used the expression.

Mr. Edises: I am sorry. It is my recollection. If I am mistaken I will withdraw the question. I simply asked it because I believe it has not been altogether cleared up.

Mr. St. Sure: Let's read back and be sure. If you have a doubt in your mind, let's go back and see.

Mr. Edises: That is the reason I asked the question, but I may be mistaken.

(Testimony of E. C. Woods.)

Mr. St. Sure: Perhaps it is best to say my objection goes to the form of the question.

Q. (By Mr. Edises) Can you state, Mr. Woods, just what was done when you communicated with the other unions in regard to the cargo no longer being hot?

A. We did so after the complaint was filed.

Q. By the complaint you mean the charge that was filed with the National Labor Relations Board?

A. Yes sir.

Q. And what did you say to these unions at the time?

A. We told them, we informed them that we had filed a complaint and we were taking the pickets off.

Q. Was anything further stated to them?

A. Not as I recall; no sir.

Q. Do you know the date of Judge Sloss' decision in regard to the hot cargo issue, the last decision of his, I mean? [451]

A. Do I know the date?

Q. Yes.

A. No, I don't recall the date.

Mr. Edises: Do you have it there, Mr. St. Sure?

Mr. St. Sure: I may be able to find it here in the file. (Referring to file) It was in September, the latter part of September.

Q. (By Mr. Edises) Would you state, to the best of your recollection, it was in the latter part of September?

A. I think it was.

(Testimony of E. C. Woods.)

Mr. St. Sure: My own recollection, and it is purely recollection, and with the suggestion offered, is that it was about the 27 of September. It was along in that last week in September, according to my recollection. If that is close enough for your purpose we may agree that is the time, subject to correction if we find another date more accurate.

Mr. Edises: That is agreeable.

Q. (By Mr. Edises) Do you know when the warehousemen's union first got in touch with the National Labor Relations Board in regard to the Santa Cruz situation, and with the object in view of filing a charge against the Santa Cruz Fruit Packing Company?

A. The date—I think it is on the record, but I don't recall the date.

Mr. St. Sure: I haven't questioned your——

Mr. Edises: (Interrupting) The first record we have of [452] the warehousemen's union coming to the Board was on August 9, 1935.

Mr. St. Sure: And expressed a complaint at that time?

Mr. Edises: I believe it was just mediation.

Mr. St. Sure: I do not think, for the purpose of showing an application for a complaint was made long before the Judge Sloss decision, we ought to have that inaccuracy about the date. I won't question your word on that, Mr. Edises.

Mr. Edises: I will ask that whatever statement or reference was made to mediation be stricken from the record, because I, at that time, was not connected

(Testimony of E. C. Woods.)

with the Board and have no means of knowing whether mediation was the subject of the first conversation.

Mr. St. Sure: I have no objection. Suppose we leave it that you are to supply for the record the date the first application was made for the complaint and that may, by statement of counsel, be placed in the record.

Mr. Edises: I will have to get the information definitely from our records in the office.

Trial Examiner Traynor: All right.

Q. (By Mr. Edises) Calling your attention to Board's Exhibit No. 3, a proposed agreement between the Weighers Warehousemen & Cereal Workers' Union and the Santa Cruz Fruit Packing Company, and specifically to Section 3, subdivision (c), [453] that is the paragraph which I believe was read to you by Mr. St. Sure, is it not?

A. Yes.

Q. Does the provision therein in regard to preference in employment have reference to regular help or to extra help?

Mr. St. Sure: I think you mentioned this morning the contract spoke for itself. If you want to know Mr. Woods' understanding I take it you can ask for that, but as to what the contract itself means I take it it is a matter, as you objected this morning, for the interpretation of the Board itself.

Mr. Edises: My question was only directed to clearing up the matters gone into on cross, and it is the only question I have in that connection.

(Testimony of E. C. Woods.)

Mr. St. Sure: I have no objection to your asking what his understanding of the matter is.

Q. (By Mr. Edises) What is your understanding—you have read the section, haven't you?

A. Yes sir. That is the regular men.

Q. Read it aloud.

A. You read it and I will answer your question.

Q. The section reads: "The employers will for one month from date hereof, if none of their regular employes is available, employ as extra help members of Local 38-44; provided, however, they retain [454] the right to employ an occasional man who is not such a member." Does that refer to regular help or extra help?

Mr. St. Sure: I will stipulate that the words, "extra help" appear in the paragraph, but beyond that it is a matter of interpretation from reading the agreement.

Mr. Edises: That is all, Mr. Woods.

Recross Examination.

Q. (By Mr. Edises) Mr. Woods, you made the statement that at the time Mr. Bridges went with you to see Mr. Huddleson, and Mr. Jackson was also there, that Mr. Bridges was present because his men were out and he wanted to straighten the matter up as far as they were concerned. Do I understand that some of the members of 38-79 were not working at that time by reason of the Santa Cruz cargo being declared hot?

A. Several gangs.

(Testimony of E. C. Woods.)

Q. What time was it that several gangs you say were not working because of the fact that Santa Cruz cargo had been declared hot?

A. What time, what date?

Q. Yes.

A. I don't recall just what date. It was the time that there were several gangs of warehousemen let out from Encinal and Howard, and several of the gangs of stevedores from San Francisco. [455]

Q. That was in August?

A. Yes sir.

Q. They were let out for what reason?

A. Because they wouldn't handle Santa Cruz cargo.

Q. Aren't you confusing the time and the occurrences in August with occurrences that happened about a month later in September?

A. Well, I wouldn't be sure of the time, just what time it was.

Q. But at the time that Mr. Bridges and you and Mr. Jackson went to see Mr. Huddleson it was along in August sometime, wasn't it?

A. There had been some of the gangs laid off then.

Q. At the time you went there?

A. Yes sir.

Q. Is it your recollection that some of the gangs were laid off at Howard, Encinal and other terminals because they wouldn't handle Santa Cruz cargo?

A. I wouldn't say some of the gangs but some of the particular men had been. Later the gangs were laid off too.

(Testimony of E. C. Woods.)

Q. Isn't it your recollection, Mr. Woods, that at the time that you and Mr. Bridges and Mr. Jackson went to see Mr. Huddleson that the only laying off of men, so far as the handling of cargo was concerned, was the result of their own refusal to do certain work? I mean the only lack of work on their part was because they had refused to handle certain cases that were on the dock, isn't that correct?

[456]

A. The cases you mean that had been on there, on the dock, before or after?

Q. Either or both, Santa Cruz—river lines.

A. They had never refused to handle any cases that were put on the dock before the lockout.

Q. Let's talk about those that were put on afterwards.

A. Yes sir.

Q. The only resulting lack of employment, so far as members of Mr. Bridges' union were concerned at that time, when you went there with Mr. Bridges and Mr. Jackson to see Mr. Huddleson, was because the men themselves refused to handle certain cargo, isn't that correct?

A. That is correct, the Santa Cruz cargo.

Q. And they handled everything else that was around, except river lines, at the time, is that correct?

A. That is right.

Q. Isn't it your recollection, Mr. Woods, that it wasn't until along later, rather late in the month of September, that men were discharged by the ter-

(Testimony of E. C. Woods.)

minal operators on the docks for refusing to handle Santa Cruz cargo?

A. That was on a big scale, yes.

Q. Did you have any information of any discharge or suspension of any men from work at any particular instance before that time, for refusal to handle Santa Cruz cargo?

A. I haven't their names, no. [457]

Q. Well, can you give us any dates or places, or any other way to identify the time that you say the men were laid off before that general operation?

A. I think they have a record of them in the office.

Q. Can you get it?

A. I will try.

Q. All right, I wish you would.

A. Yes.

Mr. St. Sure: I think that is all.

Mr. Edises: One more question, if I may be permitted.

Redirect Examination

Q. (By Mr. Edises) At the time that you, Mr. Bridges and Mr. Jackson went to interview Mr. Huddleson, the men of 38-79, Mr. Bridges' local, had declared themselves against handling Santa Cruz cargo, is that correct?

A. Yes sir.

Mr. Edises: That is all.

(Testimony of Frank Granada.)

Mr. St. Sure: That is all.

(Witness excused.)

Mr. Edises: Mr. Granada.

Mr. St. Sure: September 27, 1935, is apparently the date of the Sloss ruling. [458]

FRANK GRANADA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. Granada.

Q. Your full name?

A. Frank.

Q. And your address?

A. 7101 Halliday Avenue.

Q. Married?

A. I was.

Q. At the time of the recent lockout were you married?

A. I was.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you go to work there?

A. Two years ago.

Q. What was your job?

A. On the labeling machine, loading cars, trucking, loading trucks, all around.

Q. Who was your boss?

(Testimony of Frank Granada.)

A. Stan Torenson and Ernie.

Q. Who? [459]

A. Ernie Reich.

Q. When did you apply for membership in the union?

A. I think it was on Monday.

Q. August 5th?

A. Around then, yes.

Q. Is that the day you got your button?

A. Yes—no, I got it on Tuesday.

Q. You got your button on Tuesday?

A. Yes. They didn't have enough buttons for all, so they gave it to me on Tuesday.

Q. Were you present on Monday when Mr. Huddleson spoke to the men?

A. I was.

Q. And what did you hear Mr. Huddleson say about the union at that time?

A. Well, he says he knew that we were going to joint the union, knew about it a week ago. He said he knew all about it. He says, "If we were planning to be in the union or was we going to stay on the job?"

Q. Did he say anything else about the union?

A. Well, he says, "I don't blame you boys." He says, "I was once a union man myself for many years." He says, "I can't afford—I am not going to be the goat and be the first of the 57 canneries in California to pay it." He says he wasn't going to be the goat. [460]

(Testimony of Frank Granada.)

Q. Did he say anything about a contractor?

A. Yes. He says that if we joined the union that he will have a contractor to—we will go out through one door and he will put a contractor through the other door.

Q. Did you go to the initiation meeting Wednesday night?

A. I did.

Q. Who told you about it?

A. Mr. Bob Anger.

Q. When did he tell you?

A. Oh, in the morning about ten o'clock, Wednesday morning.

Q. What did he say at that time?

A. He said, "We are going to go to the initiation meeting tonight."

I says, "What time?"

He says, "Well, I think it will be around 7:30 or 8 o'clock." He said, "I asked Mr. Torenson if we could get off."

And I said, "What time are we going to get off?"

He says, "About 4:30."

Q. Do you know Mr. Gomez?

A. Yes, I do.

Q. Did you know him before the recent lockout?

A. Yes, I knew him from the Pacific Coast here at the 16th Street depot, the Pacific Coast Cannery Company.

Q. Had you worked for him before? [461]

A. I never did, or never have.

(Testimony of Frank Granada.)

Q. But you knew him?

A. Yes sir.

Q. When did you first see him around the Santa Cruz plant?

A. I saw him on Monday morning.

Q. What was he doing then?

A. Oh, walking around and looking around the machines.

Q. Did you speak to him?

A. No, I never.

Q. When did you see him again?

A. I saw him on Tuesday afternoon around 2 o'clock.

Q. What was he doing then?

A. Walking around again.

Q. When did you see him again after that?

A. Yes, on Wednesday.

Q. What time?

A. About 3 o'clock. I think there was a Chinaman going around with him through the aisles between the stacks.

Q. What time was that?

A. Around 3 o'clock.

Q. About how many Chinamen were with him?

A. Just one with him.

Q. If the Board orders that you be given your job back will you take it?

A. I do. [462]

Mr. Edises: That is all.

(Testimony of Frank Granada.)

Cross-Examination

Q. (By Mr. St. Sure) When you knew Mr. Gomez you say he was with the Pacific Coast Canners?

A. Yes.

Q. Do you know what his job was with them?

A. I couldn't tell you. I know he was working, but I don't know whether he was a contractor or what he was doing there. I knew he worked there for quite a while.

Q. You knew he was with the other canning concern, and they have closed up since then, haven't they?

A. What?

Q. The Pacific Coast Canners have closed up?

A. I don't know. I never worked there.

Mr. St. Sure: No questions.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Is Mr. Ledke here?

(No answer.)

Mr. Edises: Off the record.

Trial Examiner Traynor: Off the record.

(Discussion off the record.)

Mr. Edises: Mr. Scott, will you take the stand, please?

LESTER H. SCOTT,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as [463] follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Lester Scott.

Q. Your address?

A. 447 Orange Street.

Q. Oakland?

A. Yes.

Q. Are you married?

A. Yes.

Q. Any children?

A. No.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you go to work there?

A. About a year and a half ago.

Q. Who hired you?

A. Jimmy Freeman.

Q. Was he the foreman at the time?

A. He was can stacker.

Q. What?

A. He was a can stacker.

Q. Were you working in the warehouse when you first went there?

A. Yes.

Q. What was your job? [464]

A. Well, I first got a job from him and worked from there to the warehouse.

(Testimony of Lester H. Scott.)

Q. What did you do in the warehouse?

A. On the labeling machine.

Q. Did you do other work?

A. Yes.

Q. Were you changed around from one job to another in the warehouse?

A. Yes sir.

Q. And did you at various times do all of the different jobs in the warehouse?

A. Yes sir.

Q. Did you load the cars and trucks with cases of canned goods?

A. I have.

Q. Were you subject to being called for that work at any time?

A. Yes.

Q. When did you first apply for membership in the union?

A. I think it was in July—when the rest of them did.

Q. The latter part of July?

A. Yes sir.

Q. And when did you get your union button?

A. I think I got it Tuesday.

Q. Tuesday. Were you present on Monday around 6 o'clock [465] when Mr. Huddleson spoke to the men?

A. No.

Q. You were not present?

A. No.

Q. Did you go to the meeting Wednesday night?

A. I did.

(Testimony of Lester H. Scott.)

Q. From whom did you learn about it?

A. I worked Tuesday and the men told me Tuesday there would be a meeting that night.

Q. Do you remember who told you?

A. No, I don't.

Q. When you speak of "that night" you mean Wednesday night, do you not?

A. Yes, Wednesday.

Q. Do you remember what was said to you when you learned that there was to be a meeting Wednesday night?

A. They just said "Come around to the meeting."

Q. Is your recollection of it rather hazy? If it is, say so.

A. Yes.

Q. There is no trick here.

A. Yes.

Q. Did any one ever tell you your work was unsatisfactory?

A. No.

Q. Never bawled out for poor work? [466]

A. No sir.

Q. Will you take your job back if it is offered to you by the Santa Cruz Packing Company?

A. Yes.

Mr. Edises: That is all.

Cross Examination

Q. (By Mr. St. Sure) When did you first meet Mr. Woods?

A. I didn't see him until after the meeting, when I went to the meeting.

(Testimony of Lester H. Scott.)

Q. That was the night of the initiation?

A. Yes sir.

Q. Had you ever seen the agreement that was submitted before the initiation to the Santa Cruz?

A. No.

Q. Had you ever heard it read to you, or had it read to you?

A. No, I haven't had it read.

Q. Do you know what it contained?

A. No.

Q. The answer is no?

A. No.

Q. Answer audibly because the reporter has to get the answer.

A. No.

Q. Were you ever informed that—first, did you ever [467] participate in any act of violence, intimidation, or anything of that sort, following the time that the Gomez men went on the job there?

A. No, I didn't.

Q. Were you ever informed by Mr. Woods, or Mr. Bridges, or Mr. Jackson, or any one else, that the management of Santa Cruz said it would put back to work the men who had not participated in violence?

A. I didn't get that.

Q. Did anybody ever tell you that Mr. Huddleson said that he would reemploy the men who had not taken part in acts of violence?

A. No, I never heard that.

Q. Mr. Woods didn't tell you that?

A. No.

(Testimony of Lester H. Scott.)

Q. Mr. Bridges didn't tell you that?

A. No.

Q. Mr. Jackson didn't tell you that?

A. No.

Q. Were you working on the day shift or the night shift?

A. Day shift.

Q. Following the night of the initiation meeting, since that time have you yourself applied to any one in connection with the Santa Cruz Fruit Packing Company for your job, or concerning the situation so far as you personally are [468] concerned?

A. No, I haven't.

Q. You have made no effort to do so?

A. No, I haven't.

Q. Did you act as picket during any of the time, that is, from the time the picket line was first established until it was removed.

A. I did part of the time.

Q. Were you there during the daytime or the nighttime?

A. Different times.

Q. Pardon me?

A. Different times; some night and some days.

Q. During the night some of the time?

A. Yes sir.

Q. What hours were you there at night?

A. Supposed to be from 6 o'colck to 6 o'clock.

Q. From six in the evening until six in the morning?

A. Yes.

(Testimony of Lester H. Scott.)

Q. What were your duties during the night while you were there as a picket?

A. Just watching.

Q. Pardon me?

A. Just watching.

Q. Watching what?

A. Watch the trucks that go in. [469]

Q. Then what did you do? Did you look at them, or anything else, when the trucks went in?

A. Just supposed to tell them that there is a lock out and tell them not to go in.

Mr. St. Sure: That is all.

Redirect Examination

Q. (By Mr. Edises) What wages were you getting at the warehouse?

A. 35 cents an hour.

Q. What was your reason for joining the union?

A. Better working conditions.

Q. What do you mean by "better working conditions"?

A. Well, for shorter hours and better wages.

Q. Do you still belong to the union?

A. Yes.

Q. Do you desire to remain a member of your union?

A. I do.

Q. Do you desire to be represented by the officers of the union in their negotiations and dealings with the Santa Cruz plant?

A. I do.

(Testimony of Connie Martin.)

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Connie Martin. [470]

CONNIE MARTIN,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Connie Martin.

Q. What is your address, Mr. Martin?

A. 1780 Hayes Street.

Q. Married?

A. Yes.

Q. Any children?

A. Expecting one.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. Who is your boss?

A. Stan Torenson.

Q. When did you first go to work there?

A. Over two years and a half ago.

Q. Two years and a half ago?

A. Yes sir.

Q. Have you worked steadily there ever since?

A. Yes sir.

Q. Were you ever told your work was unsatisfactory?

(Testimony of Connie Martin.)

A. No sir.

Q. When did you apply for membership in the union? [471]

A. In the latter part of July.

Q. Who asked you to join?

A. Well, we were all talking about it, between the whole gang.

Q. What were your reasons for joining the union?

A. Better conditions, less work.

Q. When did you get your union button?

A. Monday, August the 5th.

Q. August 5th?

A. August 5th.

Q. Who gave it to you?

A. Bob Anger.

Q. Were you present on Monday around 6 o'clock, when Mr. Huddleson spoke to the men?

A. Yes sir.

Q. Do you remember what he said about the union?

A. A little.

Q. Well, what did he say?

A. Well, he said he understood we had organized a union, and said a union was a good thing; said but it was impossible for him to pay 62½ cents an hour, if that was what we wanted. He said he wouldn't pay that unless we got the other 57 canneries in the state to pay it. He said he would give us two days to think it over.

Q. What did he want you to think over? [472]

(Testimony of Connie Martin.)

A. Think over if we would stay with the union, or if we wanted to stay there working; that if we were going with the union, we were all through and we would lose our jobs if we kept the buttons and stayed with the union.

Q. Do you know Mr. Gomez?

A. I do now.

Q. Did you ever see him around the Santa Cruz plant before Wednesday, August 8th?

A. Yes.

Q. August 7th?

A. Yes sir.

Q. What day did you see him?

A. Saw him Monday.

Q. What time?

A. About around 10 o'clock in the morning.

Q. In the morning?

A. In the morning.

Q. Were you on the day shift?

A. Yes sir.

Q. Where did you see Mr. Gomez?

A. Saw him in the warehouse there.

Q. What was he doing?

A. Walking around looking at the stacks.

Q. Did you ever see him there before Monday at any time?

A. I don't recall. [473]

Q. Did you see him on Tuesday?

A. Yes sir.

Q. Did you see him on Wednesday?

A. Yes sir.

(Testimony of Connie Martin.)

Q. What time on Wednesday?

A. Saw him about a quarter after three, with two Chinks.

Q. And where did you see him?

A. Right in front of the office. I was cutting some labels and I seen him talking there.

Q. Who did you see him talking to?

A. With Gomez.

Q. Well, I am speaking of Mr. Gomez. Who did you see him, Gomez, talking to?

A. To two Chinks.

Q. You saw him talking to two Chinamen?

A. Yes sir.

Q. And was Mr. Torenson around?

A. No sir.

Q. Were they by his office?

A. Yes, right in front of his office.

Q. Did you go to the initiation meeting Wednesday night?

A. Yes sir.

Q. Who told you about the meeting?

A. Bob Anger.

Q. When did he tell you? [474]

A. About 10 o'clock in the morning.

Q. What did he say?

A. He told me we were going to get initiated that night at 8 o'clock. He said he had spoken to Stan Torenson and Stan Torenson said it was O. K.

(Testimony of Connie Martin.)

Q. Did he say at what time you were supposed to be able to leave that afternoon?

A. He said he told him if we could leave at 4:30 in the afternoon, and he told me that Stan Torenson told him it was all right.

Q. Did you show up the next morning, Thursday morning, for work?

A. Yes sir.

Q. What did you find when you got there?

A. I found the doors locked and with two watchmen at the door.

Q. Did you speak to anybody who was working for the company at that time?

A. No sir.

Q. Were you on the picket line?

A. Yes sir.

Q. Did you do picket duty?

A. Yes.

Q. If the Board orders your reinstatement will you take your job back? [475]

A. Yes sir.

Mr. Edises: That is all.

Cross Examination

Q. (By Mr. St. Sure) Were you on the picket line during the day, during the night, or at both times?

A. Well, we had about three or four days nights, and three or four days days.

Q. What did you do when you were there as a picket?

A. Peaceful picketing.

(Testimony of Connie Martin.)

Q. Yes, but I mean who did—what did you do to do peaceful picketing?

A. We were supposed to picket.

Q. What?

A. The way you are supposed to do picketing.

Q. What did you do while you were there? That is all I want to know.

A. Well, we would tell the trucks not to go in there, that there was a picket line there, and that we were locked out.

Q. Did you say anything else to the truck drivers that went in there?

A. That is all we was to tell them.

Q. Did any of them go on through?

A. Some went through, some went out.

Q. Did you say anything else to those that went through? [476]

A. No sir.

Q. Did you tell them whether they should come back again or not?

A. If they came back, we would tell them again if they were the same ones.

Q. When did you first meet Mr. Woods.

A. August 7th.

Q. That was at the initiation meeting?

A. Yes sir.

Q. When did you authorize Mr. Woods to represent you in the negotiations with the Santa Cruz Fruit Packing Company?

A. I don't understand that.

(Testimony of Connie Martin.)

Q. When did you tell Mr. Woods that he could represent you in dealing with the management there?

A. I didn't tell him anything.

Q. Pardon?

A. I didn't tell him anything.

Q. Who did you tell? Did you tell anybody that they could represent you?

A. Well, Bob Anger was the one that was taking that up.

Q. What did Bob Anger tell you about it? Did he tell you they were going to have somebody represent you?

A. Said we got represented when we got initiated.

Q. Before the time you got initiated did anybody, or was there anybody representing you, as far as you are concerned, [477] that is, before you got initiated?

A. Bob was.

Q. All right. What was he representing you for? What was he going to do?

A. I don't get that.

Mr. Edises: I submit, if the Examiner please, that it is pretty clear from his answers that the man has a pretty general idea of what he joined the union for. As far as specific authorization is concerned, I submit that from the facts of this case, it ought to be clear that each of these men were not required to go specifically to Mr. Anger, or any one else, and give them A, B, C and D as to what they were to do for them.

(Testimony of Connie Martin.)

Mr. St. Sure: I haven't asked for A, B, C and D. I asked whether he knew anything about what was going on. I am not asking for A, B, C, D or 1, 2, 3, 4. I would like to know what this man thought he was having by way of representation, other than asking what he understood that to be. I think I am entitled to it.

Mr. Edises: I think you are, but I think if you will ask this man what he understood he was doing by joining the union, you will get his reply without any evasion of any kind.

Mr. St. Sure: I haven't suggested he is evading. [478] I just haven't gotten an answer, that is all.

Trial Examiner Traynor: You expected the union to send a representative to the Santa Cruz plant to talk over working conditions and wages?

The Witness: Yes, we expected Mr. Woods to go there and talk with them. We didn't know anything about it.

Q. (By Mr. St. Sure) Did you expect that before you were initiated?

A. Well, I heard they were going to talk with the boss, Mr. Huddleson.

Q. Pardon me?

A. I heard they were going to talk to Mr. Huddleson first, before we got locked out as we did.

Q. Did you know of any agreement, any regular written agreement, that was to be submitted to the management there, to Mr. Huddleson?

A. No, I don't.

Q. You have never seen that agreement?

A. No sir.

(Testimony of Connie Martin.)

Q. Have you ever heard it discussed, I mean as to what it contains, what it said?

A. No sir.

Mr. St. Sure: I think that is all. [479]

Redirect Examination

Q. (By Mr. Edises) Are you satisfied with the way the union has handled the situation in connection with the lockout and so forth?

Mr. St. Sure: I take it there is no charge against the union. I thought the Board filed charges against the Santa Cruz Packing Company.

Mr. Edises. It seems to me that the questions you have put to the witness, Mr. St. Sure, have a definite bearing on just how the union represented these men, whether it was acting in accordance with the will of the membership, and so forth.

Trial Examiner Traynor: I think that is a fair question.

Q. (By Mr. Edises) Have you any complaint to make with the way the union dealt with you, or dealt with the Santa Cruz Packing Company?

A. No, I am satisfied with it.

Mr. Edises: That is all.

Recross Examination

Q. (By Mr. St. Sure) To this day you don't know what demands were made by the union in the contract they sent to the Santa Cruz Fruit Packing Company, do you?

A. No, I don't know.

Mr. St. Sure: That is all.

Mr. Edises: Just a minute. [480]

(Testimony of Connie Martin.)

Further Redirect Examination

Q. (By Mr. Edises) Did you know that the union was going to ask for higher wages, shorter hours, better working conditions?

A. Yes, sir.

Mr. Edises: All right.

Trial Examiner Traynor: We'll rest for five minutes.

(At this point a recess was taken after which proceedings were resumed as follows:)

Mr. Edises: Mr. Pio.

MR. ALFRED PIO

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Your name is Alfred Pio?

A. Yes, sir.

Q. P-i-o?

A. Yes, sir.

Q. And your address?

A. 665-6th street, Oakland.

Q. Are you married?

A. Yes.

Q. Any children?

A. One.

Q. How old?

A. Going on six.

A. Going on six. [481]

(Testimony of Alfred Pio.)

Q. You work for the Santa Cruz?

A. Yes.

Q. When did you go to work for them?

A. April, 1935, April 1st.

Q. Did you work on the day or night shift?

A. Night shift.

Q. When did you first apply for membership in the union?

A. The latter part of July.

Q. Whom did you apply through?

A. Bob Anger, I guess.

Q. What was your reason for applying?

A. Better conditions.

Q. What do you mean by that?

A. Just better conditions.

Q. Do you mean you wanted higher wages? Did you want shorter hours?

A. Shorter hours and better conditions.

Q. And what did your joining the union have to do with your desire for better working conditions?

A. I don't know.

Q. Well, can't you answer the question?

A. Yes, more pay.

Q. Did you expect the union to negotiate with the company for you to get better conditions?

A. Yes, sir. [482]

Q. Do you know who Mr. Woods is?

A. Now, I do.

Q. Had you ever belonged to a union before?

A. No, sir.

(Testimony of Alfred Pio.)

Q. Do you know anything about unions?

A. No, sir.

Q. Other than that they were supposed to get better conditions for you?

A. Yes, sir.

Q. When did you get your button?

A. On Tuesday.

Q. Were you present on Monday when Mr. Huddleson spoke to the men?

A. Just in the tail end of his talk.

Q. Tail end of his talk. What did you hear him say?

A. All I heard him say, was when he was going out he told the boys he wouldn't recognize the union, and for us to take a couple of days to think it over.

Q. Did you go to the initiation meeting Wednesday night?

A. Yes, sir.

Q. Who told you about the meeting?

A. Bob Anger.

Q. What did he say when he told you about it?

A. We knocked off in the morning, Wednesday morning. Torenson was there. He told us, it was O. K.; he would make [483] arrangements for us to go to the meeting.

Q. Just a moment! I am afraid I don't quite follow you. You say Bob Anger told you about the meeting on Wednesday morning, is that right?

A. Yes, Sir.

(Testimony of Alfred Pio.)

Q. And about what time was that?

A. Around nine—nine or after nine; some time around that.

Q. Was that just when you were knocking off work?

A. Yes, sir.

Q. Did he say anything about having gotten permission for you to get off?

A. Yes.

Q. What did he say in connection with that?

A. I asked him if we could get off. He said Mr. Torenson was right there by the machines. He asked two or three of us what we were going to do about it.

I said it was up to him to get someone in our place. Torenson said it was O. K., he would fix it up for us.

Q. Who was there at the meeting?

A. Bob Anger.

Q. Who else?

A. Larry Doyle.

Q. Who else?

A. Sonn—Sonnberg, or something like that.

[484]

Q. Sonnbeck?

A. Yes.

Q. Will you repeat as closely as you can remember what Mr. Torenson said at that time?

A. Well, he said it would be O. K. He would try to arrange to get somebody to take my place on the labeling machine.

(Testimony of Alfred Pio.)

Q. Yes, go on.

A. So, he said he would go to the other warehouse, maybe he could arrange it.

I asked him about that at the office when he checked us out. He said, "O. K., you can go; but be back right after the meeting."

Q. Did you go to the meeting?

A. Yes.

Q. Did you come back after the meeting?

A. Yes.

Q. Who was with you at that time?

A. I came back in the car alone. I was sitting back in the car waiting for Doyle and Sonnbeck to come.

Q. What time was that?

A. Ten-thirty, I guess.

Q. What happened after you arrived at the Santa Cruz plant?

A. After the other boys came we went down to the warehouse. There was a couple of guards there. One had some kind of a gun with him. We asked him if we could see Torenson. We [485] didn't know what it was all about.

He said, "Well, we are goiing to have trouble around there." He said "You had better go home."

We said we worked there.

He said it was O. K.; we were on the pork and bean crew.

They let us go up to the door. Someone there opened the door. We saw Torenson coming in.

(Testimony of Alfred Pio.)

We asked Torenson, "Do we go to work?"

Torenson said "No, you are out."

We told him that was all we wanted to know. I went on home then.

Q. Didn't you think it was strange for him to say that, after he told you to come back?

A. Sure.

Q. Didn't you say anything to him after that?

A. Couldn't say anything. We thought we were canned. He just locked the door.

The next morning I came back to see what it was all about. I saw all the fellows out there. I knew the whole works were canned, the ones who had the union buttons.

Q. What was your job at the plant?

A. Running labeling machines at night.

Q. Ever do anything else?

A. Everything in general.

Q. Were you shifted along from one job to another? [486]

A. Yes, sir.

Q. Including loading the cars?

A. Yes, sir.

Q. Were you ever shifted over to the Stokely warehouse?

A. A few times over there; yes.

Q. And who ordered you to go over there on those occasions?

A. Torenson, or Ernie Reich.

Q. What was the reason for your being transferred at that time?

(Testimony of Alfred Pio.)

A. Extra work over there, there was extra work over there to do; not enough men, I guess.

Q. Whose name appeared on your pay check?

A. Santa Cruz. I don't know who signed it.

Q. Santa Cruz Packing Company's name was on the checks?

A. Yes.

Q. Did that also occur while you were working at Stokely?

A. Same thing, two separate checks with the same names on them.

Q. If the Board orders your reinstatement, will you take your job back?

A. Yes, sir.

Mr. Edises: That is all.

Cross Examination

Q. (By Mr. St. Sure) Before you applied for membership in the union, had you ever discussed with your employer, or with [487] anyone connected with the Santa Cruz plant, the matter of your desire for more pay?

A. No.

Q. When did you first meet Mr. Woods?

A. When we were initiated that night.

Q. Have you ever seen this agreement that was sent to the Santa Cruz management, before the initiation meeting?

A. No.

Q. Did you ever hear it read, or discussed?

A. Yes, at the initiation meeting.

(Testimony of Alfred Pio.)

Q. The agreement was read at that time, was it?

A. Yes.

Q. Who read it?

A. I don't remember.

Q. Do you recall anything about the agreement that was read to you?

A. No.

Q. Do you recall how many hours a week were to be a week's work?

A. I don't recall much about what was in it.

Q. Pardon me?

A. I don't recall what was in it very much now.

Q. Did you do picket duty?

A. Yes.

Q. And who was in charge of the picket duty? I mean, who told you, or who suggested to you that you go on the picket line? Who had charge of that? [488]

A. The union, I guess; the union.

Q. Pardon me?

A. The union.

Q. Well, who from the union did you talk to?

A. Bob Anger was representing us.

Q. What did he tell you what you were to do while you were there as a picket?

A. Just walk back and forwards.

Q. Is that all?

A. That is all I got.

Q. Did you stop any trucks?

A. Not me.

(Testimony of Alfred Pio.)

Q. Pardon me?

A. No.

Q. How many days were you there on picket duty?

A. About all the time, I guess.

Q. You didn't stop any trucks?

A. No.

Q. Anybody else stop any trucks while you were there?

A. I didn't see any.

Q. You didn't see any trucks stopped either day or night?

A. No.

Q. Wasn't that part of your purpose in being there as a picket, to let the truck drivers know that they shouldn't [489] go in there?

A. We were out there — the teamsters knew there was pickets out there. They wouldn't go past the pickets. That is all the orders we had.

Q. Well, the trucks came in from the country. Did you try and let them know who you were, that you were pickets?

A. No.

Q. So far as you know, there weren't any trucks stopped going in and out of the plant at all?

A. I don't remember seeing anyone stop them.

Q. Were you there every day and night, and some time during each day?

A. Yes.

Q. For how long a period?

A. Sometimes ten and twelve hours.

(Testimony of Alfred Pio.)

Q. I mean, over a period, were you there for a matter of two or three weeks?

A. You mean on day or night?

Q. I mean, how long were you there on picket duty, part of each day? You say you were there two or three weeks. Were you there from the time the trouble first started and until the picket line was removed?

A. Yes.

Q. You were there day or night during that entire period? [490]

A. Yes.

Q. Were all the pickets on duty about one place, that is, there at the intersection of 57th Avenue and East 14th Street?

A. Down by the Chevrolet.

Q. Down by the Chevrolet. When the picket line was first established you were on 57th Avenue, weren't you?

A. Yes.

Q. Did you stop any trucks at that time?

A. Not personally.

Q. Did you see any stopped?

A. No.

Q. You say you did not?

A. No.

Q. Well, were you there when the picket line was moved back from 57th Street, 57th Avenue, to a place on East 14th Street?

A. Yes, on East 14th.

(Testimony of Alfred Pio.)

Q. Do you know why it was moved back? Did anybody tell you why?

A. All I got out was the cannery locked 57th up.

Q. You say the cannery locked it up?

A. Yes.

Q. Who ordered you to move back?

A. The police.

Q. Did the police tell you why they wanted you to move back?

A. No. [491]

Q. You didn't ask them?

A. No.

Q. Anybody else ask them while you were there?

A. I don't know.

Q. That is, you didn't hear anybody ask?

A. No.

Q. You say you didn't hear all the things Mr. Huddleson had to say on this Monday evening gathering. You got there late, or after it was partly over?

A. It was about all over when I got there.

Mr. St. Sure: I think that is all.

Redirect Examination

Q. (By Mr. Edises) What do you understand Mr. St. Sure to mean, by the word "stop" when he speaks of "stopping trucks"?

A. Getting on them and stopping them.

Q. You mean, forcing the drivers to stop whether they liked it or not?

A. Yes.

1994

(Testimony of Alfred Pio.)

Q. You didn't see anything like that?

A. No.

Q. You saw the pickets talking to the drivers and asking them not to go through the picket line?

A. I didn't hear them talking to them, but I was close enough.

Q. By talking to them and asking them not to go through— [492]

Mr. St. Sure (Interrupting): He said he wasn't close enough to hear. How does he know what he asked them.

Q. (By Mr. Edises) Did you ever see any of the pickets talking to any of the truck drivers?

A. No.

Q. You don't remember—

Mr. St. Sure (Interrupting): He didn't say he didn't remember. He said "No."

Mr. Edises: I beg your pardon.

Q. (By Mr. Edises) You saw certain of the pickets talking to truck drivers though, didn't you?

A. Yes, I was kind of far away most of the time.

Q. But did you consider that stopping trucks?

A. No.

Q. What was your answer?

A. No.

Recross Examination

Q. (By Mr. St. Sure) Did you see any trucks stopped and turn back and go away from that place without going into the plant?

(Testimony of John Reckling.)

A. No.

Q. You did not?

A. No.

Mr. St. Sure: That is all. [493]

Mr. Edises: That is all.

Mr. Reckling.

JOHN RECKLING,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Your name is John Reckling?

A. Yes.

Q. Where do you live?

Q. 1836-70th Avenue.

Q. Oakland?

A. Oakland.

Q. Are you one of the complainants in this action?

A. I am.

Q. If the Board orders your reinstatement, will you accept your job back?

A. I will.

Q. If it is offered to you?

A. I will.

Q. Did you work for Santa Cruz or Stokely?

A. I worked for Santa Cruz.

(Testimony of John Reckling.)

Q. Were you ever shifted over to the Stokely Warehouse?

A. Yes, several times.

Q. Who ordered you over there?

A. Sam Torenson and Ernie Reich. [494]

Q. When did you first go to work for Santa Cruz?

A. About two and a half years ago.

Q. What kind of work did you do?

A. Well, I did all the work in the warehouse, shifted around.

Q. Did you do loading?

A. Yes, I did.

Q. Did that constitute a good part of your work?

A. Well, sometimes it did; sometimes all day, other times just an hour or so.

Q. That was loading onto the trucks and box cars, is that correct?

A. Yes, sir.

Q. When did you first apply for membership in the union?

A. The latter part of July.

Q. Whom did you apply through?

A. Well, we all signed up at the warehouse there; Bob took the slip into the local union.

Q. What was your reason for joining the union?

A. To get better wages, shorter hours.

Q. What did you expect the union to do for you in that connection?

A. I expected them to represent me.

Q. When did you get your union button?

A. On Monday, October 6th.

(Testimony of John Reckling.)

Q. Monday is the 5th, I believe. [495]

A. Fifth; somewhere in there.

Q. Who gave it to you?

A. Bob Anger.

Q. Did you hear Mr. Huddleson speak to the men on Monday?

A. Yes, I did.

Q. And were you wearing your button at that time?

A. I was.

Q. As far as you can remember, what did Mr. Huddleson say to you?

A. Well, he said we never let him know that we were organizing, joining the union; so he went ahead the same way and got himself a contractor. He said he could have a contractor step in on a moment's notice.

Q. Do you remember anything else particularly?

A. Yes. There was another remark he made that I remember.

He said, "You are not fucking me; you are fucking yourself." He paused a few moments and he repeated it. He repeated the same statement.

Q. What did you understand him to mean by that?

A. Well, the way I got it, why, if we kept up our union activities we would be out—we would be without a job.

Q. Do you know Gomez?

A. Well, I had him pointed out to me.

Q. When?

(Testimony of John Reckling.)

A. On Monday, the first time he was pointed out to me. [496]

Q. Who pointed him out?

A. Some of the follows who had already seen him told me it was Gomez.

Q. What did you see him doing?

A. I saw him both at Santa Cruz and Stokely warehouses. He was walking around looking at stacks. I never did speak to him.

Q. Had you ever seen him around the warehouse before?

A. Not before Monday.

Q. Did you see him on Tuesday?

A. Doing the same things, yes.

Q. On Wednesday?

A. Yes, doing the same things.

Q. What times did you see him on Wednesday?

A. I saw him several times in the afternoon.

Q. When was the first time you saw him during the afternoon?

A. Well, I imagine it was around two o'clock; somewhere in there.

Q. Anybody with him?

A. No, he was by himself.

Q. Did you see him with anybody else during the afternoon?

A. No, I never.

Q. Did you go to the initiation meeting Wednesday night?

A. Yes, I did. [497]

Q. Who told you about the meeting?

A. Bob Anger.

(Testimony of John Reckling.)

Q. When?

A. About nine or ten in the morning, Wednesday morning.

Q. What did he tell you at that time?

A. He told me we were having a meeting that evening. I asked him if he had gotten permission from Torenson to go.

He said yes, he was talking to him this afternoon. He said it was all right to go.

Q. What time did you knock off that day?

A. Four-thirty.

Q. How did you happen to knock off at four-thirty?

A. That was the time Bob said we had permission for us to go.

Q. Did you do picket duty?

A. Yes, I did.

Q. Did you ever receive suggestions or instructions from the union, or any official of the union, to the effect that you were to use force or violence in stopping trucks, or any other activities on the picket line?

A. No, I never did.

Q. Did you ever use any force or violence?

A. No, I never did.

Q. Or any kind of direct action?

A. No. [498]

Q. Do you know what I mean by "direct action?"

A. By that I think you mean violence, isn't that it?

(Testimony of John Reckling.)

Q. That is essentially it. Did you ever see anyone else forcibly stop trucks?

A. No, I never did.

Q. Did you ever talk to any truck drivers?

A. Yes, I did.

Q. What did you say to them?

A. I just told them it was a picket line; usually they never went through.

Q. Did you threaten him?

A. No, I never.

Mr. Edises: That is all.

Cross-Examination.

Q. (By Mr. St. Sure) Did you hear the contract read at the initiation meeting Wednesday night?

A. Yes, I did.

Q. Do you recall any of the terms that were in the contract?

A. Yes, it was 62½ cents an hour, and eight hours a day, six days a week.

Q. Were those the terms you were most interested in?

A. Yes, it was.

Q. Are you sure 48-hour week?

A. 48-hour week, yes. [499]

Q. Who read the contract at that meeting?

A. I believe Bob read it; I am not sure about it, though.

Q. Was that the first you had heard of it?

A. No. We heard the general terms discussed. That is, we discussed them among ourselves.

(Testimony of John Reckling.)

Q. Whom did you discuss it with before the initiation meeting?

A. The rest of the fellows.

Q. When did you learn, or did you learn, that it had been submitted to the management?

A. You mean, that the contract was sent to the management?

Q. Yes.

A. Well, I heard it Monday; I believe it was Monday that it was sent.

Q. You are sure of that, on Monday?

A. I believe it was.

Q. It wasn't mailed until Tuesday. I am just wondering if your figures are mixed.

A. It might have been Tuesday, but I heard it had been sent.

Q. Up to that time you hadn't heard the contract itself read?

A. Not until Wednesday evening.

Q. Had you met Mr. Woods before that time?

A. I had seen him.

Q. You hadn't talked to him before that time?

[500]

A. No, I wasn't introduced to him, but I had seen him around.

Q. You did picket duty, you say. Nights or days, or did you vary the time, sometimes nights and sometimes day?

A. Both.

Q. All during the time the picket line was there?

A. Yes, I was.

(Testimony of John Reckling.)

Q. Anybody in particular have charge of the picket line?

A. Well we usually elected a captain. He was just there to see that the men didn't do anything wrong.

Q. Now, about this matter of stopping trucks; what did you do, just flag them down?

A. Sometimes; sometimes they stopped of their own accord.

Q. Then, what conversation did you have with any of the truck drivers?

A. All I usually said, it was a picket line; the rest was up to them. The officers wouldn't let us talk to them much, so that is all we usually said. They could either go in or turn around, whatever they liked.

Q. Did you take the numbers of any of the trucks that went in?

A. No, I never.

Q. Did you see any other men taking the numbers of any trucks?

A. No, I didn't. [501]

Q. About how many men were there on the picket line? I mean, the average.

A. Oh, about ten, twelve, fifteen.

Q. There was only one street leading into the cannery; that is a blind street leading down into the cannery, is that right?

A. Yes, 57th Avenue.

Q. The only way you could go to, or come from, the cannery, was on 57th Avenue?

(Testimony of John Reckling.)

A. Yes.

Q. Before the initiation meeting night, were you working night shift or day shift?

A. I was working day.

Q. On the day that the meeting, the initiation meeting, was held, what time did you leave work?

A. Four-thirty.

Mr. St. Sure: I think that is all.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: May I recall Mr. Reckling for one question?

Trial Examiner Traynor: Yes. Mr. Reckling.

JOHN RECKLING,

recalled for further examination as a witness for the National Labor Relations Board, having been previously sworn, testified as follows: [502]

Further Direct Examination.

Q. (By Mr. Edises) I show you the Board's Exhibit No. 3, and ask you to read Section 1, Subdivision C, in regard to hours.

A. Forty hours.

Q. Does that refresh your recollection in regard to the number of hours that were to be asked for in the proposed agreement?

A. Well, I may have misunderstood. I thought it was 48. I may have got mixed up with the six shifts. I thought it was eight hours a day, six days a week. That is what I thought it was.

Mr. Edises: That is all.

Trial Examiner Traynor: Any further questions?

(Testimony of Jack Baker.)

Mr. St. Sure: That is all.

Mr. Edises: Mr. Jack Baker.

(Witness excused)

JACK BAKER,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) Where do you live, Mr. Baker?

A. 1538 C Street, Hayward.

Q. Are you married?

A. Yes, sir.

Q. Any children? [503]

A. No, sir.

Q. When did you first go to work for Santa Cruz?

A. Sixteen or eighteen months ago.

Q. You worked for Santa Cruz, did you not?

A. Yes, sir.

Mr. Edises: Mr. Reporter, read his answer in regard to when he worked.

(The answer referred to was read aloud by the reporter as above recorded.)

Q. (By Mr. Edises) What kind of work did you do there?

A. Various warehouse work, warehouse work of all sorts.

(Testimony of Jack Baker.)

Q. Do any loading?

A. Yes, sir.

Q. Into the cars that were on the track?

A. Mostly loading on trucks.

Q. Mostly loading on trucks. Were you shifted around from one job to another in the warehouse?

A. Yes, sir.

Q. Did you ever shift over to the Stokely Warehouse?

A. Once or twice, yes.

Q. When did you first apply for membership in the union?

A. Some time in July.

Q. Through Mr. Anger?

A. Yes, sir.

Q. What was your reason for applying for membership? [504]

A. Better conditions; shorter hours.

Q. What did you think the union could do for you in that respect?

A. Well, by belonging to the union, having them to represent us, why we would get along a lot better, stick together better.

Q. When did you first get your union button?

A. Tuesday, I think.

Q. What?

A. Tuesday, I think it was.

Q. Were you present on Monday when Mr. Huddleson spoke to the men?

A. I was not.

Q. Did you go to the initiation meeting Wednes-

(Testimony of Jack Baker.)

day night?

A. I did.

Q. Did you know if the agreement was read at that time?

A. Yes, sir.

Q. Do you recall who read it?

A. No, I don't recall the name of the fellow.

Q. What time did you knock off on Wednesday?

A. Oh, I don't know; I knocked off early that day; some time around two or three o'clock.

Q. Two or three o'clock?

A. Yes, I didn't knock off with the rest of the fellows.

Q. Was that your usual quitting time? [505]

A. Not necessarily; there were lots of times I would knock off at noon; some times later some times earlier.

Q. When you left at two or three o'clock on Wednesday, were you through for the entire day?

A. I was, yes.

Q. How was it to be determined when you were to quit?

A. Well, as a rule, we were assigned to a certain job, especially shipping. At the time I happened to be working for a can stacker; we finished up the job. If you wanted to go to work on another job, it was all right. If it wasn't too busy, you could go on home, when you finished a job at a reasonable hour.

Q. What would you do before you went home?

A. Well, I checked out.

Q. What did this process of checking out consist of?

(Testimony of Jack Baker.)

A. There was a time card with the hours on it. This was punched, the hours, you checked out.

Q. Would you have to look up Mr. Torenson before you checked out?

A. Not necessarily; if you found one of the assistant foremen, you could check out through them.

Q. Ever check off through Reich?

A. Yes, sir.

Q. Remember who you checked out through that day, Wednesday? [506]

A. I was working for a can stacker that day.

Q. You worked for the warehouse direct that day?

A. No, I didn't.

Q. I see. Who told you you could go home?

A. The can stacker.

Q. Did you speak to Mr. Anger at all on Wednesday?

A. I think I did.

Q. How did you learn about the meeting that was to be held that night?

A. Mr. Anger told me.

Q. Do you remember when he told you?

A. Just told me there would be the initiation meeting that night between 7:30 and 8 o'clock.

Q. Did he say anything else that you remember?

A. No, I didn't ask him anything else. I think —I knew I was going to get through early that day.

Q. Do you know Mr. Gomez?

A. No, I don't.

(Testimony of Jack Baker.)

Q. Did you show up for work on Thursday morning?

A. I did.

Q. Did you try to get in?

A. I did.

Q. What happened?

A. Well, there was the watchman there. He said all men with buttons, union buttons, could not go in. He had orders [507] to keep them out. The cars that drove up that morning, he told them to move on and park some other places.

Q. Who told them?

A. The watchman said that there may be some action around there before long.

Q. There may be some "accidents"?

A. Action.

Q. The night watchman said that?

A. Yes.

Q. Did you ever belong to a union before?

A. No, sir.

Q. Did you work on the picket lines?

A. I did.

Q. On the day time or night time?

A. Both.

Q. Did you ever stop any trucks?

A. I have.

Q. What do you mean by stopping trucks?

A. Just stop them; tell them there was labor trouble there, that we had a picket line.

Q. How did you stop them? Throw rocks in front of them?

(Testimony of Jack Baker.)

A. Just go out and wave your hand at them.

Q. Did you ever threaten any of these truck drivers?

A. No, sir.

Q. Ever receive any orders from the union to use force [508] or violence?

A. I did not.

Q. Do you know of any incident when force or violence was used against truck drivers?

A. I do not.

Q. Or anyone else at the Santa Cruz plant?

A. I do not.

Mr. Edises: That is all.

Cross-Examination.

Q. (By Mr. St. Sure) Before the agreement was sent to the management, did you discuss with anyone what that agreement was going to have in it?

A. I think that was all left up to Mr. Anger; that he would represent us men as a body.

Q. Did you have any idea of what he was going to ask for?

A. I did.

Q. What did you understand he was going to ask for?

A. My understanding was it would be an eight-hour day, raise in wages, and time and a half for overtime over eight hours.

Q. Had you discussed with your foreman or the management, or anyone else before that, that you would like the management to discuss those matters with you?

(Testimony of Jack Baker.)

A. No, sir.

Q. Before the time that this contract was sent to Mr. Huddleson? [509]

A. No, sir.

Mr. St. Sure: Mr. Reporter, was there an answer?

(The answer referred to was read aloud by the reporter as above recorded.)

Q. (By Mr. St. Sure) Did you meet Mr. Woods before the night of the initiation meeting?

A. No, I did not.

Q. Pardon me, I didn't hear the answer.

A. No, I did not.

Q. Did you see any of the men at the meeting that night, that Wednesday night, who said that they had been at the plant earlier in the day, around 5:30 or 6 o'clock, that Stan Torenson told them that the boss had said if they went to the meeting their jobs wouldn't be there for them?

A. I did not.

Q. Didn't hear that discussed at all?

A. I did not.

Q. It was a complete surprise to you when you went to the plant the next morning and the watchman was there and said not to go in?

A. Yes, sir.

Q. Was there any discussion at all, the night of the initiation meeting, of the management's attitude concerning your all joining the union?

A. No. [510]

(Testimony of Jack Baker.)

Q. That wasn't mentioned at all?

A. We all had orders to go back to work, the same as usual.

Q. At the time the contract was read, was any discussion had at all as to what the attitude of the management might be the following day, or the fact that your going to the initiation meeting would make any difference at all.

A. It seemed to be understood that it was all right to go to the meeting. As far as the contract, we didn't know how that would come out. We were hoping for the best.

Q. Was there discussion as to how the management felt about it, or what would be done?

A. Not that I recall.

Q. Did anything take place at the meeting except the formal initiation itself, and the reading of the contract? Any discussion at all about conditions there, about negotiations, or anything of that kind?

A. There was just a discussion that there would be a union representative to represent us, and present the contract to Mr. Huddleson, and take care of the business for us. We would be notified at any time what was going on, and if there was any objections. The contract was read, and all the men asked if it was agreeable with them; and if there was any discussion. I don't think a man spoke up. I don't think there was any discussion or anything else.

Q. Did you see George Costa there at the meeting? [511]

A. I think I did, I wouldn't say for sure, but I think I saw him there.

(Testimony of Jack Baker.)

Q. Did you see Cliff Algrava there?

A. I don't recall seeing him.

Q. In any event, you don't recall either of them saying anything about having talked to Torenson before going to the meeting?

A. I do not.

Mr. St. Sure: I think that is all.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Mr. Gerald Olivera.

GERALD OLIVERA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your full name?

A. Gerald Olivera.

Q. Where do you live?

A. San Leandro, 1347—44th Avenue.

Q. Are you married?

A. Yes.

Q. Any children?

A. No.

Q. When did you first go to work for the Santa Cruz Fruit [512] Packing Company?

A. I worked for Stokely.

Q. Oh, you worked for Stokely?

A. Yes.

Q. When did you first go to work for them?

(Testimony of Gerald Olivera.)

A. About two years ago.

Q. Who hired you?

A. Manuel Frates.

Q. Who is he?

A. He is our assistant foreman.

Q. What was the nature of your work at the Stokely warehouse?

A. Loading cars, loading cars and loading trucks, stacking cans, tearing down stacks.

Q. Were you ever shifted over to Santa Cruz?

A. Occasionally.

Q. Who ordered you over there when that happened?

A. Manuel Frates.

Q. Whose checks did you receive, Santa Cruz or Stokely, or what?

A. Santa Cruz checks.

Q. Santa Cruz Fruit Packing Company's name appeared on top of the check?

A. Yes.

Q. Do you know by whom it was signed? [513]

A. Gaddis.

Q. Anybody else?

A. I don't remember.

Q. When did you first apply for membership in the union?

A. The latter part of July.

Q. Through Mr. Anger?

A. Through Bob Anger, yes.

Q. Had you ever belonged to a union before?

A. No.

(Testimony of Gerald Olivera.)

Q. Do you know anything about union activities?

A. Yes.

Q. What was your answer?

A. Yes.

Q. Where did you learn that? Did you have anything more than a general knowledge of the union?

A. I thought for more wages and better conditions, shorter hours.

Q. How did you think the union was going to get that for you?

A. By sending some representative to Mr. Huddleson, and the agreement.

Q. Were you present on Monday when Mr. Huddleson spoke to the men?

A. No, I wasn't.

Q. Did you go to the initiation meeting Wednesday night? [514]

A. Yes.

Q. What time did you get off on Wednesday?

A. Four-thirty.

Q. How did you happen to get off at that time?

A. Well, we were through with our work that day.

Q. Is that true of all the Stokely men, were they all through with their work at 4:30 that day?

A. Yes.

Q. Did you speak to Mr. Anger at all on that day?

A. He was talking to me at noon that day.

Q. What did he tell you at that time?

(Testimony of Gerald Olivera.)

A. He told us there was going to be an initiation meeting that night at 7:30.

Q. Did he say anything else?

A. That is all.

Q. Was it necessary for the Stokely men to get special permission to knock off at 4:30 on Wednesday?

A. No.

Q. Did you say Manuel Frates told you you could leave?

A. Yes.

Q. Was he the one who usually gave you permission to knock off, and told you when to quit?

A. Yes.

Q. Did you know Mr. Gomez?

A. No, I don't, didn't then. [515]

Q. Do you know him now?

A. Yes.

Q. Do you remember seeing him around either of the warehouses Monday, August 5?

A. On Monday, I did.

Q. Where did you see him?

A. I saw him in one of the warehouses. I don't know which one it was.

Q. Speak to him?

A. No.

Q. What did you see him doing?

A. He was walking around, gazing at the fellows.

Q. Had you ever seen him before?

A. No.

(Testimony of Gerald Olivera.)

Q. Did you show up for work on Thursday morning?

A. Yes.

Q. Had you ever heard any discussion at any time prior to Thursday morning, of the men not returning to work, or going on strike, or anything along those lines?

A. No, I didn't.

Q. Did you do picket duty?

A. Yes.

Q. Use any force or violence against any truck driver, or any employee of Santa Cruz Fruit Packing Company?

A. No. [516]

Q. Or anybody else?

A. No.

Q. Did the union ever authorize any violence or force?

A. No.

Q. What were you supposed to do on the picket lines?

A. Well, I was supposed to walk up and down the street in pairs, stop a truck if we could.

Q. What did you understand that you were supposed to do in connection with stopping trucks?

A. Tell them that there was a picket line, that we had lost our jobs.

Q. Were you supposed to order them not to go in, and prevent them from going in whether they wanted to or not?

A. No, I wasn't.

(Testimony of Gerald Olivera.)

Q. Would you accept your job back if the Labor Relations Board ordered your reinstatement?

A. I will.

Mr. Edises: No further questions.

Cross-Examination.

Q. (By Mr. St. Sure) Did you see Reich at the meeting on Wednesday night?

A. I don't remember.

Q. Did you hear any discussion at all as to what the attitude of the management would be concerning the demands that had been made or the contract that had been sent, or [517] about joining the union?

A. Yes.

Q. You talked over that that night?

A. The agreement was read.

Q. Was there any discussion as to what the management might think about it, or what they might do about it?

A. I don't remember.

Q. Did Ernie Reich, or anyone else there, say, early that evening, that he had talked to Torenson, and Torenson said no one was to go to work, that none of the night shift was to go to work if they went to the meeting?

A. I don't get you.

Q. I say, did anybody there at the meeting say that they had been at the plant earlier that evening, before the meeting, that Torenson had said that the bosses' orders were that no one was to come back to work if they went to the meeting?

A. I don't remember.

(Testimony of Gerald Olivera.)

Q. You don't remember?

A. No.

Q. Do you remember any discussion at all, or any talk at all about anything of that kind?

A. No.

Q. When was the contract read, before the initiation or afterwards? [518]

A. I don't remember.

Mr. St. Sure: That is all.

Mr. Edises: That is all.

(Witness excused.)

Trial Examiner Traynor: We will adjourn until 10 o'clock tomorrow morning.

(Thereupon, at 4:00 o'clock p.m., the hearing in the above-entitled cause was adjourned until 10:00 o'clock a.m., Friday, January 3, 1936.) [519]

[Title of Court and Cause.]

Extra Sessions Courtroom, Alameda County Court House, Oakland, California, Friday, January 3, 1936.

Met, pursuant to adjournment, at 10:45 o'clock a. m.

PROCEEDINGS.

Trial Examiner Traynor: Are you ready to proceed?

Mr. Edises: Yes. Call Mr. Algrava.

CLIFFORD ALGRAVA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows: [520]

Direct Examination

Q. (By Mr. Edises) Your name is Clifford Agrava?

A. Yes sir.

Q. Where do you live?

A. 1951 East 24th Street.

Q. Are you married?

A. No.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. Who hired you?

A. Stan Torenson.

Q. When was that?

A. About a year and a half ago, or two years.

Q. And what was your job?

A. Oh, I was an all-around man, strapping and working on the labeling machines, loading trucks, loading box cars.

Q. You were shifted around from one job to another?

A. Yes.

Q. You didn't have any special job?

A. No special job.

Q. Were you ever moved over to the Stokely warehouse?

A. Yes.

Q. At whose request, or whose order, rather?

A. Either Stan Torenson or Ernie Reich.

Q. What wages were you receiving? [521]

(Testimony of Clifford Algrava.)

A. 35 cents an hour.

Q. All the time you were working there?

A. Yes.

Q. What were your hours?

A. Anywhere from ten to fourteen hours a day.

Q. When did you apply for membership in the union?

A. It was the latter part of July.

Q. And when did you receive your union button?

A. Monday, I think, August 5th.

Q. Were you initiated on Wednesday, August 7th?

A. Yes.

Q. What led you to join the union?

A. Well, I wanted shorter hours and better pay.

Q. Shorter hours and better pay?

A. Yes.

Q. What did you expect the union to do for you in that connection?

A. Well, I expected the union to back me up in it; that is, when we went out to get shorter hours and better pay.

Q. Well, what else did you expect the union to do for you? Did you expect them to represent you?

A. Yes, that is it.

Q. Did you know they had a business agent?

A. I knew they had some sort of representative, but I never knew what it was. I don't know much about the union, [522] or didn't at that time.

(Testimony of Clifford Algrava.)

Q. You speak of a representaitve. You mean to personally represent the men?

A. Yes.

Q. In negotiations with the company?

A. Yes.

Q. Were you present on Monday, about 6 o'clock, Monday, August 5th, when Mr. Huddleson spoke to a group of the warehouse men?

A. Yes.

Q. Do you recall at that time what was said and done at that meeting?

A. Yes, I do.

Q. Well, would you relate what happened?

A. Well, when Mr. Huddleson called us for the meeting—

Q. (Interrupting) Talk louder, please.

A. (Continuing)—Mr. Huddleson called us there for the meeting and all of the boys showed up. Well, he stated that he was paying as much as any cannery on the Pacific Coast, and that he couldn't pay 62½ cents an hour to the boys unless all the 57 other canners did in the State; and that we might get 62½ cents an hour if somebody else was running the cannery, but not as long as he was running it.

Q. What did he say about the union?

A. He said a union was a good thing; that he had been a [523] union man for fourteen or fifteen years himself; but, he says he couldn't afford to have a union in his cannery.

Q. Had Mr. Huddleson ever called the warehousemen together before, to your knowledge, and spoken to them on any subject at all?

(Testimony of Clifford Algrava.)

A. Nto to my knowledge.

Q. When did you learn about the initiation meeting to be held on Wednesday night?

A. When I came off shift Wednesday morning.

Q. You were on the night shift?

A. I was working nights. We just started the night shift. After that speech Mr. Huddleson gave us, the next night we started the night shift.

Q. And you learned about it as you were coming off shift Wednesday morning?

A. Yes.

Q. Who told you about it?

A. I don't exactly remember who told me

Q. About what time was that?

A. I imagine it was close to 7 o'clock in the morning.

Q. Was that the usual time that you got off shift?

A. Yes. 6 o'clock was the usual time, but I was hanging around waiting for some one.

Q. You don't remember who told you about the meeting?

A. No. [524]

Q. Do you remember what you learned about the meeting?

A. I knew there was going to be a meeting that night, but I was going to come on shift at 6 o'clock and I would find out more about it. I was going to work an hour or so and go down to the meeting.

Q. Did you discuss that with somebody?

A. I discussed it with George Costa.

(Testimony of Clifford Algrava.)

Q. Did you know whether or not it would be all right for the men to go, to get off to go to the meeting?

A. No, I never.

Q. So you intended to come to work that night at 6 o'clock, Wednesday, which was your usual time; is that correct?

A. That is correct.

Q. Did you show up for work at 6 p. m. Wednesday evening?

A. Yes, I did.

Q. What happened then?

A. Well, I went to work with George Costa. We went together. Then I went in and seen Stan Torenson and he told me, out of a clear sky, there wasn't going to be a night shift that night, and with no explanation.

I said, "Good, I want to go to the meeting, anyway."

Q. When he said there was going to be no night shift that night, what did you understand him to mean by that?

A. Well, we had only started the night shift the night before, that is, to run 24 hours a day to get out more, I guess [525] was the idea of it. I figured it was for a day or two and I figured the night shift had ended and there was no work.

Q. And did he say anything to you about the meeting, about your going to the meeting?

A. He didn't mention it.

(Testimony of Clifford Algrava.)

Q. Did he state that if you went to the meeting that night you might as well not show up for work any more, or anything to that effect?

A. No sir.

Q. Did you see anyone else around the plant at that time whom you had not seen previously?

A. Well, as I was going to go out to come home I went over to the pork and bean labeling machine and I seen a strange fellow in a gray suit. I do not know who he is until this day.

Q. Did you ever seen him before?

A. No. He was running the labeling machine. He had the pork and bean crew—some of the boys were extras—and this strange man was running the machine.

Q. Do you know whether that was Mr. Gomez or not?

A. I wouldn't say.

Q. Did you have any conversation with him?

A. No.

Q. What did you do then? Did you go on home?

A. I went home. [526]

Q. And you went to the meeting?

A. Yes.

Q. What did you do the following morning?

A. I went back to the cannery about 6 o'clock in the morning. That night before I went to the meeting I told Stan, "I will be seeing you in the morning," and he said, "O. K."

Q. When did you say that to Stan?

(Testimony of Clifford Algrava.)

A. Well, when I asked him if we were going to work that night.

Q. You said, "I will be seeing you in the morning," and he said, "O. K."

A. Yes. I said, "I will be seeing you in the morning about 6 o'clock," and he said, "O. K." I went in at 6 o'clock, George Costa and me, and I went right into Stan Torenson's office at 6 o'clock in the morning, on Thursday.

Q. Were any of the men there at that time, had they arrived yet?

A. No.

Q. What was said and done in Stan Torenson's office?

A. I went in and I said, "What time are we going to work this morning?"

Stan, he says, "You are not."

I said, "What do you mean?"

He says, "Well, I haven't got nothing to do with the warehouse any more." He says, "All I have is this little book to keep track of how things are going on. If you want to work [527] you have to see Manuel Gomez, the contractor."

Q. Anything else said then?

A. No sir.

Q. What did you say to that?

A. I said, "We might as well get outside."

Q. Who said you might?

A. I said, "I might as well get outside." I didn't know what the score was.

(Testimony of Clifford Algrava.)

Q. What did you do then?

A. I said, "I might as well go outside."

He said, "I think it will be best and will save us a lot of trouble."

Q. So then what did you do?

A. I went outside and waited for the rest of the boys to come around.

Q. Did you ever hear any talk among the men about striking the Santa Cruz plant or walking out?

A. No.

Q. If the Board orders your reinstatement will you take your job back?

A. Yes.

Mr. Edises: That is all.

Cross-Examination

Q. (By Mr. St. Sure) On this Wednesday evening, before the [528] initiation meeting when you went back to the Santa Cruz plant to go to work that evening did you see Ernie Reich there?

A. Not that I remember.

Q. Who else was there besides yourself, Stan Torenson, George Costa—was there anyone else that you recall?

A. No.

Q. Did you see Ernie Reich later that evening at the meeting?

A. I seen him, yes.

Q. What?

A. I saw him at the meeting.

(Testimony of Clifford Algrava.)

Q. Did he say anything to you that Torenson had told him that if anybody went to the meeting they might as well not show up the next day for their jobs wouldn't be there?

A. No.

Q. He didn't mention that to you?

A. No, I didn't talk to him personally that night.

Q. He didn't say a thing at the meeting while you were there about what Torenson said?

A. No.

Q. Did you say anything to any one there at the meeting about the fact that there wasn't any night shift?

A. I mentioned it, yes.

Q. Did any body make a response or say anything to you as to why that was?

A. Just casual remarks. [529]

Q. Who did you talk do, do you recall?

A. No, I don't remember; it is so far back.

Q. Was there any discussion at the meeting at all about the fact that either there wasn't any night work that night, or Torenson had said that those who did go to the meeting needn't come back?

A. No sir.

Q. Wasn't mentioned at all?

A. No sir.

Q. Was there any discussion about the fact that the initiation meeting was objected to by the management? Did anybody mention that at all?

A. No, it wasn't mentioned.

(Testimony of Clifford Algrava.)

Q. You say when you got there, about 6 o'clock on Wednesday evening you went and saw Stan Torenson?

A. Yes, I went to his office.

Q. And did you always go to his office when you went to work?

A. Always.

Q. And when you did that what did you say and what did he say?

A. I got there, George Costa and I, and I said, "Stan, is there going to be work to-night?" That is the way I put it.

He said, "No, there is not going to be a night shift tonight."

Q. Did you have any doubt when you went there about going to work? I mean why did you ask him if there was going to be [530] work that night?

A. I asked him if there was going to be work and what time we were going to work?

Q. What time?

A. Yes, what time we were going to work. We varied the starting time from half an hour or fifteen minutes.

Q. Was George Costa with you at that time when you had that conversation with Torenson?

A. Yes, I think he was.

Q. What?

A. He was.

Q. Did you say anything about going to the meeting?

A. Who is that, who said what?

(Testimony of Clifford Algrava.)

Q. Did you say anyhing about going to the meeting that night?

A. To who, George Costa, or what?

Q. To Torenson, or Costa, when you were there?

A. Yes. When he mentioned there wasn't going to be no night shift I said, "Good, I can go to the meeting tonight."

Q. Who else was working on the night shift, who had worked the night before?

A. Frank Granada, Ernie Reich was running a machine, myself, George Costa, Cirincione and another fellow, but he hadn't been around and I have forgotten his name.

Mr. Edises: Sannebeck? [531]

The Witness: No, he disappeared right after the lockout.

Q. (By Mr. St. Sure) Well, at the meeting that night did you talk to Granada, Reich, or anybody else about the fact that there wasn't any night shift work that night, and the reason for it? Did you discuss that at all among yourselves?

A. No. I took it for granted that they knew. I never talked to them that night.

Q. Well, had there been any talk there in the warehouse among the men about the fact that there had been strangers around the warehouse Monday and Tuesday and a man by the name of Gomez had been there? Did you talk with any one about it or did any one talk with you about it?

A. I didn't see Manuel Gomez, or didn't hear any talk myself.

(Testimony of Clifford Algrava.)

Q. At the meeting that night was anything said at all about the Santa Cruz plant or about conditions there or about what might happen at the Santa Cruz plant?

A. No, but there was, what do you call it, the contract?

Mr. Edises: Contract.

Q. (By Mr. St. Sure) Contract, agreement?

A. It was read, I think it was.

Q. Who read it?

A. I don't recall who read it.

Q. Don't you remember who read it?

A. I can't recall. [532]

Q. Was there any discussion, did anybody have anything to say about it as it was read, or afterwards?

A. No, just read off.

Q. Was any reason given as to why it was read to you?

A. It was a proposed agreement for Santa Cruz, I imagine.

Q. Did anybody ask you what you thought about it, whether you approved of it, whether you did or didn't like it?

A. Nobody brought that up.

Q. What?

A. It wasn't mentioned. There was no, what you call, no questions asked about it and no need to mention it.

Q. Did anybody volunteer anything or say anything, whether they liked it or didn't like it?

(Testimony of Clifford Algrava.)

A. Nobody volunteered, no.

Q. Was anything said about it at all, or was it just read?

A. Just read.

Q. Were you told whether it had been sent to the management or not, or whether the management had replied, or what was going to be done next about it?

A. Not that I recall.

Q. When did that happen, before or after the initiation?

A. I think that was read off before the initiation, if I am not mistaken.

Q. But you can't remember who read it?

A. No, I can't.

Q. Do you remember what was in it? [533]

A. I think it was a 40 hour week and the warehouse scale, 62½¢ an hour.

Q. Do you remember anything else about it?

A. I think it mentioned overtime, time and a half.

Q. Did they tell you whether it had been signed or not, or whether it had been accepted?

A. They didn't mention anything about that.

Q. Before the agreement was read, what was said, or did somebody just get up and start to read it? Did they tell what it was they were going to read, or why they were going to read it to you?

A. They mentioned it, yes.

Q. What did they say and who said it?

(Testimony of Clifford Algrava.)

A. They said, "Here is a proposed agreement." I imagine that was it.

Q. You were there, not what you imagine but what you remember.

A. Well, that is it. That is what they call it, a proposed agreement. Isn't that it?

Q. What did they call it. You were there?

A. That is what they said.

Q. Who are "they"? Who said it?

A. I don't recall.

Q. You say after the agreement was read there were no questions asked, no comments made? Nobody said a word, is that right? [534]

A. That is right.

Q. Before that time had you ever heard about this agreement before?

A. No.

Q. Before you went to the meeting on that night, that Wednesday evening, did you know that any request had been made of the management for higher wages or for anything else?

A. No.

Q. And the first you knew of any request for changes that had been made was when you went to the meeting that night when they read this agreement?

A. Yes.

Q. How long a period was this agreement to cover, do you remember?

A. I don't remember.

(Testimony of Clifford Algrava.)

Q. Weren't you interested in that?

A. I was, but I can't recall exactly.

Q. Now, on Monday evening Mr. Huddleson had called the men together and told them, among other things, that they ought to take a day or two to think over what he had said to them?

A. That is true.

Q. And on Wednesday evening was anything said at all by anybody at this meeting as to what answer they ought to make to Mr. Huddleson, or what ought to be done next?

A. No. [535]

Q. It wasn't mentioned at all?

A. Not that I recall.

Q. You gained the impression, I take it, at this Monday night discussion that, in fact, Mr. Huddleson very frankly said he couldn't afford to pay the 62½¢ an hour, if that was the demand, while his competitors were paying less. He said something to that effect, didn't he?

A. Yes.

Q. And you gathered from that that he didn't like the idea of this demand of 62½¢ an hour, didn't you?

A. Certainly.

Q. When you went to the meeting on Wednesday night nothing was said at all about what he would think about your going ahead with the union proposition and the demand for 62½¢ an hour?

A. No.

(Testimony of Clifford Algrava.)

Q. At any time, from between Monday and the Wednesday night meeting *meeting,* or at the Wednesday night meeting, did any one suggest that you heard, or did you have a discussion with anybody concerning what you were going to do as to Mr. Huddleson's suggestion that you think it over and let him know what you wanted to do?

A. Not that I remember.

Q. At the Wednesday night meeting were any plans made, or any discussion had as to what you were going to say to: Mr. Huddleson if he asked you what the result of your thinking it [536] over had been?

A. No.

Q. Did anybody tell you what the next move was going to be in so far as this contract was concerned?

A. No.

Q. Did anybody ask what the next move was going to be?

A. I don't remember?

Q. Pardon me?

A. I don't remember.

Q. How long did this meeting last Wednesday night?

A. About an hour and 45 minutes, I think.

Q. How much of that time was taken up with the initiation itself?

A. A little better than half an hour, I imagine.

Q. What did you do the rest of the time?

A. I was listening to the other men talking.

(Testimony of Clifford Algrava.)

Q. What were they talking about? I don't want to know what they did or said other than in connection with the Santa Cruz plant. Did they talk about the Santa Cruz plant at all?

A. Just in that proposed agreement; that is all they mentioned about Santa Cruz.

Q. Well, in the hour and 15 minutes that was spent, besides the time for initiation, did it take all that time to read the agreement?

A. No. [537]

Q. What else did they talk about with reference to the agreement with Santa Cruz in the time that remained?

A. They mentioned all about the union, what it was composed of, and so forth.

Q. What did they say as to that?

A. They just mentioned how organization was the best thing, and so forth.

Q. Who mentioned that? Who did the talking in that connection?

A. I think it was Brother Tarling.

Q. Did he say anything about Santa Cruz in particular?

A. No.

Q. Did Mr. Woods do any talking that night?

A. Oh, he just made a little speech, mentioned the union activities, and so forth.

Q. Did anybody say that an agreement had been mailed to Mr. Huddleson?

A. Not that I recall.

Q. Were you asked that night, after the agreement was read, whether you approved it? Did

(Testimony of Clifford Algrava.)

you take any vote as to whether you approved or thought it was all right, or didn't?

A. No.

Mr. St. Sure: I have no other questions. [538]

Redirect Examination

Q. (By Mr. Edises) Mr. Algrava, had you ever belonged to a union before?

A. No.

Q. Did you know anything about unions before?

A. No.

Q. How old are you?

A. Eighteen.

Q. Eighteen?

A. Yes.

Q. What was the purpose of this meeting on Wednesday night?

A. To get initiated.

Q. Who was present at the meeting, speaking largely; I mean was it just the Santa Cruz and Stokely boys, or were other members there?

A. Just a private meeting, Santa Cruz and Stokely boys.

Q. Just Santa Cruz and Stokely?

A. Yes.

Q. Well, did you have the usual type of initiation? I mean did you have a lot of horse play, and so on?

A. This wasn't that type; sort of a business session.

Mr. Edises: That is all.

(Testimony of Clifford Algrava.)

Recross Examination

Q. (By Mr. St. Sure) During the time that elapsed, or [539] during the time between the Monday evening when Mr. Huddleson talked with all of you out there at the warehouse until Thursday morning when you went back to the plant and Stan Torenson told you that if you wanted o work you would have to see Gomez, did you talk to anyone at all, either connected with the union or any of your fellow-employes, concerning the things that Mr. Huddleson had talked with you about on Monday night?

Trial Examiner Traynor: Will you read the question, Mr. Reported?

Mr. St. Sure: I will withdraw it. It is probably too long.

Q. (By Mr. St. Sure) Did you talk to anybody, between Monday evening and Thursday morning about Mr. Huddleson's attitude toward your demands, or the demand for 62½¢ an hour wage?

A. I talked to George Costa quite a bit.

Q. In your talking with him did you discuss with him what the outcome of the matter might be?

A. No, we didn't have any thought for the outcome in the matter.

Q. What did you talk to George Costa about? I mean what did you say to each other about it?

A. It is so far back I can hardly remember.

Q. Well, did you have the feeling, after Mr. Huddleson [540] talked to you on Monday evening, that he meant what he said when he said he couldn't

(Testimony of Clifford Algrava.)

pay 62½¢ an hour while the other canners were paying less?

A. I didn't know for sure.

Q. You didn't know whether he meant it or not?

A. No.

Q. Did you discuss with any of the men at all, or with any one, to try and find out whether they thought he meant it or not?

A. George Costa—That is one of the things we talked about.

Q. At the meeting on Wednesday evening did you talk with anyone or did anyone there say anything at all about what Mr. Huddleson had said to you, and all of you, on Monday night?

A. No, it wasn't a topic of conversation at all.

Q. Pardon me?

A. Nobody was talking about it.

Q. Well, I gather from you that after you heard Mr. Huddleson talk on Monday night that you didn't feel that he was going to discharge everybody if they insisted upon these demands, did you? You weren't sure whether he meant it or not.

A. I didn't think he was going to discharge anybody.

Q. Didn't think he was?

A. No. [541]

Q. What did you think the purpose of the discussion was?

A. Explain yourself.

Q. I mean, what was your impression—Mr. Edises asked others what their impression was or

(Testimony of Clifford Algrava.)

what their understanding was—of what Mr. Huddleson meant when he talked to you on Monday night? What did you gather from it? You say that he never called the men together before while you were there. That was rather an unusual occasion, I take it, his calling the men in and talking with them?

A. The way the speech came up, so abruptly. I couldn't say whether he meant it or not. I don't know the feeling of the speech. I couldn't explain whether he meant it or not. I couldn't sort of get it in my head.

Trial Examiner Traynor: May I ask a question: What did you think he meant when he asked you to think it over?

The Witness: I wasn't sure.

Mr. St. Sure: Nothing else.

Mr. Edises: That is all.

(Witness excused)

Mr. Edises: Frank Phillips.

FRANK PHILLIPS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises: What is your address, Mr. Phillips? [542]

A. 5610 Hilton Street.

(Testimony of Frank Phillips.)

Q. Are you married?

A. Yes sir.

Q. Any children?

A. One.

Q. How old?

A. Five.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. Day or night shift?

A. Day shift.

Q. When did you go to work for them?

A. Oh, about two years and four months ago.

Q. Any complaints about your work?

A. No sir.

Q. What was your job?

A. Oh, I done everything. I worked in the Shipping Department, on the labeling machine, loading cars; and until I got hurt I worked on a labeling machine.

Q. You were moved around from one job to another?

A. Yes sir.

Q. Ever moved over to Stokely's?

A. Yes, lots of times.

Q. What appeared on your pay check?

A. Santa Cruz check. [543]

Q. Santa Cruz Fruit Packing Company?

A. Yes sir.

Q. The same check you got while you were working at Stokely's?

(Testimony of Frank Phillips.)

A. Same thing.

Q. When did you apply for membership in the union?

A. Oh, around July 15th, or something like that.

Q. 1935?

A. 1935.

Q. Had you ever belonged to a union before?

A. Yes.

Q. What union?

A. Boilermakers.

Q. How long had you belonged to the boilermakers' union?

A. I belonged to them about three or four years.

Q. Three or four years?

A. Yes.

Q. Did you know something about union activities?

A. Yes, a little bit; not much.

Q. What was your reason for joining the warehousemen's union?

A. To better conditions, and for shorter hours and better pay.

Q. And what did you expect the union to do for you in that respect? [544]

A. Well, they usually can get you the money.

Q. Did you expect the representatives of the union, that is, the officers of the union to dicker with the company for you?

A. Yes sir.

Q. And were you willing to place matters in their hands and let them handle things?

(Testimony of Frank Phillips.)

A. Yes sir.

Q. You understood, did you, that before any final agreement could be arrived at, that it would have to be O. K.'d by the men?

A. Yes sir, always.

Q. Were you there on Monday when Mr. Huddleson spoke to the men?

A. Yes sir.

Q. Were you wearing your union button?

A. Yes sir.

Q. What did Mr. Huddleson say about the union?

A. Oh, he got up there and got all the boys together and he said, "I see that you fellows joined the union by you fellows wearing your badges around here." Then he said, "Listen, fellows," he says, "I understand that you fellows want 62½ cents an hour." He says he couldn't pay 62½ cents an hour while the other canneries were paying low wages. He said he couldn't do it, that he would have [545] too much competition that way; and he said that he wouldn't pay 62½ cents an hour. He said before he would do that, he would die with his shoes on, or something to that effect.

Q. What else did he say?

A. And some one of our boys, Ed Resburg, he got up and said——

Before that Mr. Huddleson said, "Why pick on me first?"

Then Ed Resburg got up and said, "If you start offi first, the rest of them will do it."

(Testimony of Frank Phillips.)

Then he said, "Why make me the goat?"

He said that he would give us a couple of days to think it over. He said he had a contractor that would come in there and do it for less than we were doing it. He said if we went out one door, he would have the contractor come in the other door.

Q. Did he say anything else, as far as you can remember?

A. Well, no; only when he was getting through he said, "I would be a son-of-a-bitch to pay 62½ cents when the rest of them are paying 35 and 40 cents."

Q. Do you know whether the warehousemen, or any of the men, ever made any wage demands on Mr. Huddleson, or any Santa Cruz official, prior to the time that you joined the union?

A. A lot of the fellows—I think some of the boys got 40 cents an hour.

Q. Do you know whether there was ever any organized [546] demand or request for an increase in wages or the shortening of hours?

A. No, I don't.

Q. There wasn't?

A. Not that I know of.

Q. Pardon me?

A. Not that I know of.

Q. What time did you get off work Wednesday night?

A. 4:30.

Q. Was that your usual quitting time?

A. Well, no.

(Testimony of Frank Phillips.)

Q. How did you happen to quit at that time?

A. Bob told me, Mr. Anger, that morning about 9:30 that we were going to get off at 4:30; that he saw Mr. Torenson and Torenson said it was O. K. for the boys to get off at 4:30.

Q. And did you go to the meeting that night?

A. Yes sir.

Q. Did you hear the agreement read?

A. Yes sir.

Q. Do you remember who read it?

A. I think it was Bob Anger.

Q. And was there any discussion about the agreement?

A. All the boys were well pleased with it.

Mr. St. Sure: I object to that as a conclusion.

[547]

Q. (By Mr. Edises) Did any of the boys say anything, or is that your impression?

A. No. They said, "Fine." I heard a lot of them say "Fine; that is good."

Q. Was that all the discussion there was?

A. Yes, about the agreement.

Q. What did you talk about mostly at the meeting?

A. Oh, they talked about different union business; they didn't have much to say.

Q. Was there much talk about why it was a good thing to belong to a union, and was there any talk along that line?

A. Yes; and they told us that unionism was a good thing for us, and that we should only buy

(Testimony of Frank Phillips.)

union made stuff and that way better conditions all over.

Q. Had you ever heard any talk of a walk-out or a strike at the Santa Cruz plant at any time?

A. No sir.

Q. Did you show up for work the next morning?

A. I did.

Q. What did you find when you got there?

A. Well, we usually go in the side door into the warehouse, and I got there and I seen the whole plant there was vacant, and no machines around there; and so I went to go in through the door and I seen it was locked.

A watchman was there and I said, "Open up and leave us [548] go in."

He said, "No, you fellows are all fired." He says, "All the fellows who has got buttons are fired, and the fellows without buttons can go to work."

Q. Who said that?

A. Gene, the watchman.

Q. About what time was that?

A. About a quarter to seven.

Q. And who else was present at the time?

A. Oh, I don't know. A lot of the boys were around there, but I was talking to him myself.

Q. You were talking to him yourself?

A. Yes sir. And he made all the fellows park their cars away from the plant.

Q. How old are you?

A. Sir?

(Testimony of Frank Phillips.)

Q. How old are you?

A. 35.

Q. 35?

A. Yes sir.

Q. Will you take your job back if it is offered to you?

A. Yes sir.

Mr. Edises: That is all.

Cross Examination.

Q. (By Mr. St. Sure) On Monday evening at this meeting [549] you say you remember that Mr. Huddleson said that he couldn't pay the 62½ cents an hour while the other canneries were paying less?

A. Yes sir.

Q. And he said before he would, or could do it, or would do it, he would die with his shoes on, or something of that kind?

A. Yes.

Q. He didn't see why they wanted to make him the goat and pick on him first?

A. Yes sir.

Q. You said Resburg said something about if he started it, others might follow, and he said he didn't see why he should be the first?

A. That is right.

Q. And he told you to take a couple of days to think it over?

A. Yes sir.

Q. Did any of you come back to see him and talk to him about it?

(Testimony of Frank Phillips.)

A. Didn't have a chance.

Q. Did he ask you to come and talk to him?

A. No, he said, "I will give you fellows a couple of days to think it over."

Q. When he first started his talk, didn't he say, "Why [550] didn't you come to me if you wanted more money?"

A. No, he said why didn't we go to him first before we joined the union. That is what he said.

Q. Did anybody answer that at all, anybody say anything to that?

A. No, nobody did.

Q. Then he told you that he had a contractor who could do it for less?

A. Wait a minute—yes, somebody said that if we went to see him before we joined the union, we would get fired.

Q. Who said that?

A. I don't know; I am not sure, but I know one of the boys said that.

Q. Did Mr. Huddleson say anything to that?

A. He said, "I have treated you boys fair and square, haven't I?"

Q. Then he said something about he had a contractor who could do it for less money, and that if you insisted upon the 62½ cents, why the assumption was the contractor would have to take the work over? He said something of that kind, didn't he?

A. Yes. Well, he said he wouldn't pay the 62½ cents. He said he would have a contractor come in first.

(Testimony of Frank Phillips.)

Q. Yes. You thought he meant what he said, didn't you?

A. Oh, sure, I guess I did. [551]

Q. At that time did you know whether or not any form of agreement, or contract had been sent to Mr. Huddleson?

A. Well, when he was speaking to us that night, I believe it was Manuel Blanco, he said—well, Huddleson said something about the boys not coming to see him first, and Manuel Blanco said, "Well, we sent you an agreement."

And he says, "I haven't seen it."

Q. Did you know anything about any agreement at that time?

A. I have heard it said there was one sent to him.

Q. I know, but on that Monday night did you know then that there was an agreement that had been sent to him?

A. According to what he said, he said no, he didn't get it.

Q. I mean did you know anything about it, or had you heard anything about it before then?

A. Yes, I heard it before, that he was going to get it.

Q. That he was going to get it?

A. Yes.

Q. You don't know whether he had or not?

A. No, I couldn't say that.

Q. Had you seen the agreement yourself?

A. I didn't see it.

Q. Did you know what was in it?

(Testimony of Frank Phillips.)

A. No, I did not.

Q. Well, now, when you left there on Monday evening after [552] Mr. Huddleson was through talking, he said he would give you a couple of days to think it over. Did you have the impression that he would pay the 62½ cents an hour that you were asking for?

A. Well, no. I didn't think he would right then, but I thought maybe later on he would.

Q. What made you think that?

A. Well, I don't know.

Q. How do you reason it out? You say one reason you joined the union was the union usually got the money. Just what was your reasoning as to how they would do it?

A. Like they would go to see him and have a talk with him, and they might arbitrate for a little while, and then he might come through with it.

Q. Well, as you heard Mr. Huddleson talking that evening did you get the impression that he would be in the mood to compromise and wanted to talk arbitration, or did you think he meant what he said?

A. He might have been bluffing; we didn't know.

Q. Well, did you decide to call his bluff and find out? Wasn't that what happened?

A. No, he called ours, I guess. He kicked us out.

Q. Well, now, when you went to the meeting on Wednesday night you say that this agreement was read, you remember that? [553]

A. Yes, at the meeting.

(Testimony of Frank Phillips.)

Q. At the meeting?

A. Yes sir.

Q. When you first arrived there and the meeting was called to order, what happened then? Did you have a general discussion? I don't want to pry into your business there, or what your initiation amounts to, but I mean what happened with reference to the Santa Cruz plant from the time you got there at the meeting until the time you left. What was said about it, and about conditions, and about the agreement?

A. Well, when the meeting started they asked if we had permission to get off.

Q. Who asked that?

A. I think it was Brother Woods.

Q. All right. Was Ernie Reich there at that time?

A. Yes sir.

Q. Did Ernie Reich at that time stand up and say that Torenson had told him if anybody went to the meeting they needn't come back to work?

A. Yes, I believe he did.

Q. You heard Ernie Reich say that at that time?

A. Some words to that effect. He said that if the boys—here is what Ernie said: After the meeting they said for the boys to go back to work, the night crew. That was what was said. [554]

Q. Well, now, my first question was, when Brother Woods asked whether they had permission, I asked if Ernie Reich got up and said Torenson had told him that whoever went to the meeting

(Testimony of Frank Phillips.)

needn't come back to work, that they didn't have any job.

Did Ernie Reich say that that night?

A. No, I don't think he did.

Q. But he did say something, didn't he, about what Torenson had told him?

A. No. He just said, as I recall it, "You fellows, after the meeting go back to work."

Q. After what?

A. After the meeting go back to work, the night crew. And they said, "Yes," and they wanted to rush the meeting so the boys could go back to work, the night shift.

Q. Reich said that?

A. No, not Reich.

Q. Who did?

A. Brother Woods.

Q. What did Reich say?

A. I don't remember what he said.

Mr. Edises: I submit he has already answered it.

Mr. St. Sure: He has answered two ways, that is the trouble.

Trial Examiner Traynor: I think those are fair questions. [555]

Q. (By Mr. St. Sure) Well, now, at the time that Brother Woods asked if you got permission, just give us your best recollection now of what Reich said when that question was asked.

A. Well, he didn't answer; Bob Anger answered.

Q. Just a minute ago you said that Reich answered it. Were you wrong?

(Testimony of Frank Phillips.)

A. He answered for the night crew but not for the day shift.

Q. Didn't Reich say he had talked to Torenson around 6 o'clock and Torenson told him if the men went to the meeting they needn't come back, that they wouldn't have any jobs?

A. He didn't say that.

Q. He didn't?

A. No.

Q. Now, you said somebody said they wanted to hurry up the meeting to get back to work, is that right?

A. Brother Woods said, "We will hurry the meeting up to give the boys a chance to go back to work."

Q. Was Clifford Algrava there?

A. Yes.

Q. Was George Costa there?

A. Yes.

Q. Did either of them get up and say they had seen Torenson and Torenson said there wasn't going to be any night shift? [556]

A. I believe I heard somebody say something about there wasn't going to be a night shift.

Q. What did you hear about that? Who said it, and what was said?

A. Maybe before the meeting some one of the boys said that. I am not sure.

Q. When Woods said, "Boys, let's hurry and get the meeting over so these fellows can go back,"

(Testimony of Frank Phillips.)

didn't anybody get up and say, "Well, there isn't going to be any work tonight?"

A. No, not that I know of.

Q. So they hurried up so they could go back to work; is that right?

A. Yes sir.

Mr. St. Sure: May we have a recess for a few minutes at this time?

Trial Examiner Traynor: We will take a five minute recess.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Q. (By Mr. St. Sure) Now, Mr. Phillips, you say when the meeting began that Mr. Woods said something about whether or not the boys had permission, and then something was said about hurrying to get through the meeting so the night shift could get back to work. That is right, is it?

A. Yes, that is the pork and bean gang. [557]

Q. What?

A. That is the pork and bean gang.

Q. Well, who was on the pork and bean gang?

A. Larry Doyle, Ed Sannebeck, Al Pio—I don't know who else.

Q. Ernie Reich was the assistant foreman there in the warehouse, wasn't he?

A. Yes sir.

Q. And do you recall now what he said, if anything?

A. No, I don't believe he said anything.

(Testimony of Frank Phillips.)

Q. You don't think he said anything?

A. No.

Q. How about Costa and Algrava, did they say anything?

A. Not that I know of.

Q. What?

A. Not that I know of.

Q. All right. Then what else was said? What was done next after the preliminaries you mentioned?

A. Bob Anger, he got up and read the agreement. It was a duplicate of the one they sent to Huddleson.

Q. Did he say it had been sent?

A. I was told that one was sent to him.

Q. Did they say when?

A. Well, it was—they said he would get it on Friday, and then the following Monday he had that talk with us.

Q. Well, the talk that you had was on Monday, the 5th, is [558] that right?

A. Right.

Q. And the record shows that the agreement was mailed on Tuesday, the 6th, from San Francisco. Were you told that or were you told that it had been mailed before that?

A. Might have been—I was told it was mailed before that.

Q. Who told you that?

A. Bob Anger.

(Testimony of Frank Phillips.)

Q. All right. Did Anger say anything about the agreement at all, or did he just read it?

A. He read it there at the meeting.

Q. Did he make any comment on the agreement at all, or what was going to be done about it, or what Huddleson was going to do about it, or anything else?

A. No, he didn't say anything about that.

Q. Did Anger, or anybody else, say what the next move was going to be, what the representatives were going to do, or what you were going to do, or what anybody was going to do?

A. Yes.

Q. What was said?

A. We were all going back to work.

Q. Then, in so far as the agreement was concerned, was anything said about what was to be done about that and about the demands that it contained?

A. Well, they just told us there that we would go back to [559] work as usual, and they would go and see Huddleson.

Q. When were they going to go and see him?

A. I guess in a couple of days, or maybe the next day; I don't know.

Q. Who was going to go and see him?

A. Brother Woods.

Q. Did anybody say anything, was there any discussion at all about what Huddleson had said to you on Monday night?

(Testimony of Frank Phillips.)

A. Well, after the meeting we got to talking, some of the boys, and we said, I said, "I think we are going to get canned."

Q. Why did you think that?

A. From the way he talked; the way he talked.

Q. And who did you talk with after the meeting, with all the boys there and talking about it?

A. After what meeting?

Q. You say after the meeting you stood around and talked and you thought you might get canned.

A. That was the night that Huddleson talked to us.

Q. Was there any talk on Wednesday night about what Huddleson had said, or what was going to happen, or what might happen?

A. No.

Q. Not a word said?

A. No. All that was said, when we left there was "I will [560] see you tomorrow morning."

Q. On Monday night, after Huddleson had talked to you, as I get you, you and some of the others were concerned and thought you might get canned?

A. Yes, when I seen Mr. Gomez around the warehouse there walking around.

Q. Did you still have this notion when you went to the meeting Wednesday night, or did you think everything was straightened out?

A. No, I didn't think it was straightened out.

Q. What do you remember about this agreement that was read?

(Testimony of Frank Phillips.)

A. Oh, it just said that we would get 62½ cents an hour, that we would work 40 hours a week, and over 40 hours a week it would be time and a half.

Q. How long was the agreement to run?

A. It didn't say.

Q. Did it have any term at all, any provision about how long it was to run?

A. They didn't state that.

Mr. Edises: Just a minute.

Mr. St. Sure: I am entitled to test his recollection as to what he heard it was.

Mr. Edises: I don't believe that is the question asked. You asked about a term of the contract, whether the [561] contract contained such a term. The contract itself is the best evidence.

Mr. St. Sure: I will withdraw the question.

Q. (By Mr. St. Sure) Do you recall hearing anybody saying how long the contract was to run?

A. No, I did not.

Q. Do you remember anything else about the provisions of the contract as it was read to you that you can tell us now?

A. No, I don't remember anything else. I was just paying attention to the money, I guess, and the hours.

Q. After the agreement was read, were any questions asked about it, or any discussion concerning it?

A. Well, no. I just heard a lot of the boys say, "Gee, that is fine; that is all right."

Q. Was any vote taken?

A. No.

(Testimony of Frank Phillips.)

Q. Did anybody tell you, or anybody say what the next move was to be, except, you say, you were to go back to work? Was that the only thing said?

A. Yes sir.

Q. Who said that?

A. Well, they told us to come back the next morning.

Q. Who said that?

A. Who said for us to go back to work?

Q. Yes. [562]

A. All the fellows said, "I will see you fellows tomorrow morning."

Q. Well, did Mr. Woods, Mr. Anger, or anybody else say, "Well, go on back to work in the morning and forget it until the next meeting," or anything of that kind?

A. No, they just told these other fellows to go back.

Q. Who told the other fellows to go back? Did Anger or Woods say it?

A. Woods told the pork and bean fellows to go back.

Q. At that time did Ernie Reich say anything about the conversation he had with Torenson when Torenson told him the boss said if any of the boys went to the meeting, they needn't come back because there wouldn't be any jobs?

A. Not that I know of.

Q. Reich was there, wasn't he?

A. Yes, all the boys were there.

Q. Now, did you do picket duty?

A. Yes sir.

(Testimony of Frank Phillips.)

Q. And during the entire time, from that Thursday morning until the time that the hot cargo order was listed, were you there during that whole period as a picket?

A. Yes sir.

Q. Did you work daytimes sometimes on the picket line and nights sometimes?

A. Yes sir. [563]

Q. What did you do while you were there as a picket?

A. Walked up and down 14th Street.

Q. Did you stop any trucks?

A. Yes, I stopped a few of them.

Q. How did you stop the trucks?

A. Just get out and waved my hand and told them there was a picket line; that is all.

Q. Did they turn back or go through?

A. No, they turned back; all them that carried buttons turned back.

Q. How about those that didn't carry buttons? Did you stop them?

A. They would go through.

Q. They went through?

A. Yes.

Q. Did you tell any of them not to come back?

A. No, we just told them that if they wanted to better their conditions to not go down there; that there was a picket line here. They said, "All right," but they would come back and go in anyhow.

Q. Did any of the men whose trucks you stopped, and that didn't have buttons, tell you they owned

(Testimony of Frank Phillips.)

the trucks themselves and that they were farmers and were bringing their produce in?

A. No, we didn't ask them. We just told them not to go [564] through, that there was a picket line. And if they went through, they just went through, that is all.

Q. Were you on duty as picket when Moore and Heide were arrested?

A. Yes, I believe I was.

Q. Do you know what happened there that night, and why they were arrested?

A. Yes. They said they were fooling around with a switch.

Q. And had Moore and Heide been there before on the picket line, or had they been around the Santa Cruz plant during the time the picket line was there?

A. Might have passed there.

Q. Did you see Moore and Heide that night before the arrest?

A. Maybe I did; I wouldn't say for sure.

Q. Where were they arrested, do you know?

A. Supposed to be down near the spur track.

Q. Do you know who arrested them?

A. I don't know who it was.

Q. Pardon me?

A. A couple of speed cops.

Q. And you understood that was because somebody thought they were trying to throw a switch?

A. That was what I heard. [565]

(Testimony of Frank Phillips.)

Mr. Edises: Just a minute. I am going to ask that that go out, as far as the answer is in, and I am going to object to the question because I feel in the first place it has not been established that they were arrested for any particular reason, or the grounds for their arrest.

Mr. St. Sure: Do you question that?

Mr. Edises: I know nothing about the circumstances. I understand there was an arrest, but so far as the competency of this witness to testify to the cause, I question it.

Mr. St. Sure: I will withdraw the question.

Q. (By Mr. St. Sure) Do you know a man by the name of Moran?

A. Yes, I know him.

Q. And was he there or near the Santa Cruz plant during any of the time that the picket line was out?

A. No, not that I know of.

Q. When did you know him before this trouble?

A. I seen him down at the hall a lot of times.

Q. You never saw him near the Santa Cruz plant at all?

A. No.

Q. You say you have seen him down at the hall. What hall do you refer to?

A. 908 - 7th Street. He lives down there.

Q. I mean, when you saw him was he at the union headquarters? [506]

A. No, around 7th Street down there.

(Testimony of Frank Phillips.)

Mr. St. Sure: No other questions.

Redirect Examination.

Q. (By Mr. Edises) In regard to the night shift, Mr. Phillips, was there a distinction between the pork and bean gang and the other members of the night shift?

A. Yes.

Q. Explain the difference. What is the difference between them?

A. Well, when we are busy there we have an extra night shift.

Q. An extra night shift?

A. Yes, and then there is a regular night shift for the pork and beans. See? And that is what we were told, to go back; the pork and bean gang was told to go back to work.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Nick DeCarlo.

NICK DeCARLO,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your name?

A. Nick DeCarlo.

Q. Where do you live? [567]

A. 982—66th Avenue.

(Testimony of Nick DeCarlo.)

Q. How old are you?

A. 25.

Q. Are you married?

A. No.

Q. Did you work for Santa Cruz or Stokely?

A. Both.

Q. Both?

A. Yes.

Q. Who were you hired by?

A. Stan Torenson.

Q. At the Santa Cruz plant—when was this?

A. Two and a half years ago.

Q. Have you worked for them steadily since?

A. Yes.

Q. Ever had a complaint about your work?

A. No.

Q. I mean, was your work ever complained against by any official of the company?

A. No, it wasn't.

Q. What were your wages?

A. 35 cents an hour.

Q. During the entire period you were there?

A. Right.

Q. And what were your hours? [568]

A. Well, anywhere from eight to fourteen hours a day.

Q. Any overtime?

A. No overtime.

Q. I mean overtime pay.

A. No overtime pay.

Q. Were you paid a straight rate for overtime?

A. 35 cents.

(Testimony of Nick DeCarlo.)

Q. When did you apply for membership in the union?

A. In the latter part of July.

Q. And what led you to apply?

A. What led me to apply?

Q. What were your reasons for joining?

A. Well, I wanted better hours and more pay.

Q. Were those the chief things you were concerned about?

A. I suppose so.

Q. What was your work, was it all around work?

A. I did a little of everything—worked with the label gang, shipping crew, loaded box cars, strapped cases, and stitched fibre cases.

Q. Were you changed around from one job to another from day to day?

A. Yes sir.

Q. And at various times were you moved over to the Stokely plant and back again?

A. Yes. [569]

Q. Did you receive the same type of pay checks?

A. Yes, all Santa Cruz checks.

Q. Santa Cruz checks?

A. Yes.

Q. Were you there on Monday when Mr. Huddleson spoke to the men?

A. Yes, I was.

Q. Were you wearing a union button?

A. Yes.

Q. What was said at that meeting?

A. Well, he said he didn't think he could pay us more wages before the rest of the canneries

(Testimony of Nick DeCarlo.)

could pay it with him, and he wouldn't recognize the union; that he didn't want to be the first one to raise because he would be put out if he was. He said also that if we went ahead with the union, we were just fucking ourselves and wouldn't be fucking him.

Q. Anything else that you now recall?

A. That is about all that I remember.

Q. What did he say about a contractor?

A. Well, he said if we went out he could have a contractor in there to take our place the next day.

Q. Had you ever made any threat to Mr. Huddleson, or any other official of the plant, about going out?

A. No.

Q. Was there any talk at all among the men about a walk- [570] out or a strike?

A. No.

Q. When you joined the union did you understand that the union officials were to do your negotiating for you?

A. Yes, they were to have a representative for us.

Q. Did Mr. Huddleson ask you to think anything over?

A. Well, he did say something about giving us a couple of days to think it over, whether we wanted to go on with the union or work for him.

Q. Did he say he wanted anybody, or you, to come to him and tell him what you had decided to do?

A. No, he didn't.

(Testimony of Nick DeCarlo.)

Q. And did he set any particular day when you were supposed to see him?

A. No.

Q. Do you know Mr. Gomez?

A. Only by sight. I have seen him around.

Q. Did you see him on Monday around the plant?

A. Yes.

Q. Tuesday?

A. Saw him Tuesday.

Q. Wednesday?

A. Yes.

Q. What time Wednesday?

A. Wednesday about 3:00 or 3:30 in the afternoon. [571]

Q. Anybody with him?

A. No, I think he was alone.

Q. What was he doing?

A. He was around the pork and bean machine looking it over.

Q. Were you on the day shift?

A. Yes.

Q. Did you go to the initiation meeting?

A. Yes.

Q. Who told you about the meeting?

A. Bob Anger.

Q. Do you remember when?

A. He told me about 9:30 in the morning.

Q. And what did he tell you at the time?

A. Told me that he had seen Mr. Torenson and he had got permission for us to leave at 4:30 in the afternoon.

(Testimony of Nick DeCarlo.)

Q. Did you knock off at 4:30?

A. Yes sir.

Q. Did you go to the meeting?

A. Yes.

Q. And do you remember what was said and done at the meeting?

A. Well, the contract was read.

Q. Do you remember who read the contract?

A. I believe it was Mr. Anger; I don't remember for sure.

Q. Well, is there any particular reason why your recollec- [572] tion of that should be dim? Was it an important part of the meeting?

A. Yes, it was.

Q. Is your recollection of that incident any dimmer than that of any other part of the meeting? Let me put it this way: Do you remember that initiation meeting clearly, or is your recollection of it sort of hazy?

A. I don't remember everything about it.

Q. How long did the meeting last?

A. Around two hours, or an hour and three quarters.

Q. How long did the initiation take?

A. It took about three-quarters of an hour.

Q. And what was done the rest of the time?

A. Well, they had initiation and read over the contract, and I think Mr. Woods talked a little bit.

Q. Did anybody say anything about the men not being taken back on account of their having

(Testimony of Nick DeCarlo.)

gone to the meeting, or anything along that line?

A. No, I didn't hear anything about that.

Q. Was there any question in your mind about your being permitted to go back to work at the usual time the next day?

A. No, there wasn't.

Q. Do you remember hearing anything said about the night men going back to work?

A. They were to go back to work after the meeting. [573]

Q. Which night men?

A. The pork and bean crew.

Q. The bean crew?

A. Yes.

Q. How did you know that?

A. Well, Bob Anger told me about it, and he said he had permission for all the boys to go to the meeting.

Q. That was in the morning when you spoke to Bob Anger?

A. Yes.

Q. Do you remember hearing anybody at the meeting say anything about the night men going back to work?

A. Some of the men on the crew said they had permission from him to go to the meeting and to go back to work after the meeting.

Q. Had you ever belonged to the union before?

A. No, I didn't.

Q. How old are you?

A. 25.

(Testimony of Nick DeCarlo.)

Q. In the event that the Board orders your reinstatement will you take your job back?

A. Yes, I will.

Mr. Edises: That is all.

Cross-Examination.

Q. (By Mr. St. Sure) Did you understand on Monday evening, at the time the meeting was held when Mr. Huddleson spoke to [574] the men, that the demand was for 62½ cents an hour?

A. Yes, I did.

Q. Did you understand that the demand also was made for overtime at time and a half?

A. Yes.

Q. And did you understand also that the demand was for a 40-hour week?

A. Yes.

Q. And you understood Mr. Huddleson to say that he couldn't meet those demands, and that he certainly couldn't meet the demand of 62½ cents an hour, didn't you?

A. Yes, he did.

Q. Was it your thought that the union could overcome Mr. Huddleson's objection to that 62½ cents an hour demand?

A. Well, I thought they could help us and do what they could.

Q. Just what was your reasoning as to what the union would do for you to secure that 62½ cents an hour? How did you understand they were going to go about it?

(Testimony of Nick DeCarlo.)

A. Well, they would have some business agent or some one to talk it over with Mr. Huddleson for us.

Q. Well, supposing—what was your reasoning as to what would happen next if Mr. Huddleson meant what he said when he said he couldn't pay the 62½ cents, or any other scale higher than what his competitors were paying? [575]

A. I didn't get that.

Q. What was your idea as to what would happen next if the union people went to Mr. Huddleson and said, "We want 62½ cents an hour," and he said, "I won't pay it, and I won't pay more than I am paying now because I have competitors paying the same amount"? How did you reason as to what would follow next?

A. Try until they did get it.

Q. Well, by "try," what do you mean? Go and talk to him again?

A. Yes.

Q. Had you or any of the men, before you joined the union tried to talk to him yourselves?

A. No, but I talked to other bosses that had charge, about wages.

Q. Who did you talk with?

A. I talked with Bert Gear.

Q. What was his job with Santa Cruz?

A. Well, he was, I think, assistant superintendent there.

Q. When was that?

(Testimony of Nick DeCarlo.)

A. Oh, about two or three months before we were put out.

Q. Well, after Mr. Huddleson had said to you that he couldn't meet that demand, and that he would have to get a contractor in if the increase was insisted upon, what was your idea of what the next move was going to be, what was going to happen next? [576]

Mr. Edises: I don't want to interrupt unnecessarily, Mr. St. Sure, but it seems unless you can establish in some way that his idea was either communicated to the men or resulted from a discussion with the men, or was talked of between the men, I fail to see that it has any bearing or any significance.

Mr. St. Sure: You asked him why he joined the union. You opened up the matter. You asked what his purpose was in joining the union, and I think we are entitled to go further and ask how he expected that purpose to be accomplished. That is my one thought in pursuing the matter.

Mr. Edises: May we have a ruling?

Trial Examiner Traynor: Your objection is sustained.

Mr. Edises: May it be understood that it simply goes to the form of that question? If, Mr. St. Sure, you can establish in any way that there was a communication or discussion among the men, I have no objection to the matter.

Q. (By Mr. St. Sure) Before you applied for membership in the union did you talk to anybody

(Testimony of Nick DeCarlo.)

as to why you wanted to join the union, or what the union could do for you?

A. Not anybody with the union, no.

Q. Well, did you talk with any of your fellow-workers?

A. Yes, I did.

Q. Who did you talk with?

A. Bob. [577]

Q. Bob Anger?

A. Yes.

Q. Anybody else?

A. A few of the other boys around.

Q. Did Bob Anger say to you what the union would do, or what method the union would use to accomplish the things that you were interested in?

A. No, he didn't.

Q. Was anything said to you about the advantage of your joining some sort of an organization, that is, by Anger or anybody else?

A. By joining the union?

Q. Yes.

A. Well, if we belonged to the union we would get more money and less hours.

Q. Who said that?

A. Well, that was what the agreement called for.

Q. The thing I am getting at, was anything said or discussed as to how you were going to accomplish that?

A. No.

(Testimony of Nick DeCarlo.)

Q. Well, after this meeting on Wednesday night was there anything said at that time about what Mr. Huddleson had said on Monday evening?

A. No.

Q. That wasn't mentioned at all? [578]

A. (No answer.)

Q. Did you do picket duty?

A. Yes.

Q. How many men were on the picket line, on an average, usually?

A. Well, there were two shifts, and there were about ten to fifteen men on each shift.

Q. Each shift was a twelve hour shift?

A. Yes.

Q. What did you do during the twelve hours you were there on the picket line?

A. We walked up and down the sidewalk, and we also stopped trucks.

Q. You didn't have any card or banner or sign, or anything of that kind, did you?

A. No.

Q. What did you understand your purpose to be in being there, what were you supposed to do?

A. Well, see that no trucks went in and out of the plant.

Mr. St. Sure: That is all.

Redirect Examination

Q. (By Mr. Edises) You say that you were to see that no trucks went in or out of the plant. Does that mean that if they went in, if they insisted on going in after you had asked them not to, you were

(Testimony of Nick DeCarlo.)

to use force to stop them? [579]

Mr. St. Sure: That is cross-examination of your own witness, as well as leading and suggestive, and I object to it on those grounds.

Mr. Edises: I am willing to redraft the question.

Q. (By Mr. Edises) You say that your job as a picket was to see that no trucks went in or out. Can you elaborate on that? Can you explain just what you mean by that?

A. Well, the trucks that did go in there, why we would stand on the sidewalk and stop them by waiving our hands to them, and if they stopped we would tell them there was a picket line and they weren't to go in; but if they did, we couldn't help it.

Q. What were you supposed to do if they didn't stop?

A. We couldn't do anything about it.

Q. Were you supposed to do anything if they didn't stop?

A. No, we weren't.

Mr. Edises: That is all.

Mr. St. Sure: That is all.

(Witness excused.)

Mr. Edises: Mr. Bedford.

WALTER BEDFORD,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Where do you live, Mr. Bedford? [580]

A. 982-66th Avenue.

Q. When did you first go to work for Santa Cruz?

A. About two years ago.

Q. What was your job?

A. Everything—labeling machine, loading cars, and everything.

Q. Did the various men—were the various men at the warehouse shifted around from one job to another from day to day?

A. Yes sir, they were.

Q. When did you apply for membership in the union?

A. The latter part of July.

Q. When did you get your button?

A. I believe it was on Monday, August 5th.

Q. Were you initiated on Wednesday night?

A. No sir.

Q. Are you now a member of the union?

A. Yes sir.

Q. Did you try to get back to work Thursday morning?

A. Yes sir.

Q. And were you permitted to return? Did you succeed in getting back to work?

A. No sir.

(Testimony of Walter Bedford.)

Q. Were you present when Mr. Huddleson spoke to the men on Monday?

A. Yes sir. [581]

Q. And what time did you knock off on Wednesday?

A. 4:30.

Q. Who told you about the meeting?

A. Bob Anger.

Q. Did he tell you, likewise, that you could get off at 4:30?

A. No sir, he didn't have anything to do with Stokely.

Q. You worked on the Stokely side?

A. Yes.

Q. You were on the Stokely side, working for Stokely?

A. Yes.

Q. How did you happen to get off at 4:30?

A. We finished our work at 4:30.

Q. Will you take your job back if it is offered to you?

A. Yes sir.

Mr. Edises: That is all.

Mr. St. Sure: No questions.

(Witness excused.)

Mr. Edises: Pasqual Arieta.

PASQUAL ARIETA,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Your name is Pasqual Arieta?

A. Yes sir. [582]

Q. Where do you live?

A. 2151-38th Avenue.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you go to work for them?

A. July 11, 1934.

Q. When did you apply for membership in the union?

A. The latter part of July.

Q. Are you now a member of the union?

A. I am.

Q. When were you initiated?

A. Wednesday, August 7th.

Q. Were you present on Monday when Mr. Huddleson spoke to the men?

A. I was.

Q. And did you try to go back to work on Thursday?

A. I did.

Q. And were you successful in getting back to work?

A. I wasn't. I got there and the watchman says, "Everybody wearing union buttons can't go to work

(Testimony of Pasqual Arieta.)

this morning." The doors were locked, and the gate locked, and so I couldn't get in.

Q. Was anybody else present when that was said?

A. All the boys around; most of them were around.

Q. Will you take your job back if it is offered to you? [583]

A. I would.

Mr. Edises: That is all.

Cross-Examination

Q. (By Mr. St. Sure) You went to the initiation meeting on Wednesday night?

A. Yes sir.

Q. What do you remember happened there?

A. Well, the boys got initiated.

Q. Yes. What else?

A. The agreement was read.

Q. All right. What else?

A. That is about all I can remember.

Q. Well, who presided at the meeting, who is in charge, apparently?

A. Well, Bob was to represent us as a group.

Q. All right. Who opened the meeting, who said the first formal thing that was said? Did somebody come out and call the meeting to order? Who did?

A. I believe one of the business agents did.

Q. Which one?

A. There were two. I don't remember which. It was Tarling or Woods, one or the other.

(Testimony of Pasqual Arieta.)

Q. After Tarling or Woods called the meeting to order, what happened?

A. Initiated all the boys. [584]

Q. And after that was anything done?

A. That is all that was done. Then Bob read the agreement.

Q. Well, which happened first?

A. I think Bob read the agreement first.

Q. All right. Before he started to read the agreement what did he say? Did he say anything at all as to what he was going to read, or why?

A. Just read the agreement he had in his hand.

Q. Did he tell you what it was?

A. Yes, he read it out.

Q. I mean did he tell you anything about the agreement before he read it? Did he tell you why he was going to read it?

A. He just said, "I will read the agreement to you boys so you will know what it is about."

Q. Up to that time had you ever heard of an agreement before?

A. I heard it mentioned, that the agreement was for better conditions and working place there.

Q. Do you know what those better conditions were that the agreement contained?

A. Shorter hours, about eight hours, so we wouldn't have to work fourteen or fifteen hours a day.

Q. How many hours had you been working, on an average?

(Testimony of Pasqual Arieta.)

A. About fourteen hours a day.

Q. For how long a period of time? [585]

A. Well, let's see—about five or six weeks before the lockout we were working all the time fourteen hours a day.

Q. How long had you been working there?

A. I started to work there July 11, 1934.

Q. All right. When this agreement was read by Bob Anger, after he got through reading it did he say anything, or did anybody else say anything about it?

A. No.

Q. Any questions asked?

A. No, I don't recall any questions asked.

Q. Did anybody make any comment at all as to what they thought about it?

A. All the boys thought it was a pretty good idea, so we wouldn't have to work long hours.

Q. And how long did it take to read the agreement, just your best recollection? I don't want to tie you down to minutes, unless you can do it.

A. Oh, I should say about ten minutes or so.

Q. How long did the initiation take?

A. The initiation took the biggest majority of the time.

Q. Pardon me?

A. The initiation took the biggest majority of the time, I guess.

Q. How long were you there that night?

(Testimony of Pasqual Arieta.)

A. I imagine about an hour and a half, or an hour and forty- [586] five minutes; someplace in there.

Q. Was anything said at all that night about the meeting that you had had with Mr. Huddleson on Monday evening?

A. No, not that I remember of.

Q. Did you talk with anybody, with any of your fellow employes, about what Mr. Huddleson had said to you on Monday night, either talk to them on Monday night or Tuesday or Wednesday?

A. I did not.

Q. Did you think that Mr. Huddleson meant what he said when he said that he couldn't pay the 62½ cents an hour?

A. Well, I didn't know then whether he meant it or not.

Q. After you got to the meeting on Wednesday night do you recall anything being said by Mr. Woods inquiring into whether or not the boys had permission to be there at the meeting?

A. Mr. Woods said, "Everybody go back to work the next morning."

Q. Was Ernie Reich there?

A. He was.

Q. Did Ernie Reich say anything about what Mr. Torenson had said to him, that is, if the men went to the meeting that they needn't bother coming back to work because the jobs would be filled by some one else?

(Testimony of Pasqual Arieta.)

A. No, he didn't say anything of the kind. [587]

Q. Pardon me?

A. He didn't say anything of the kind, that I know of.

Q. Did you hear anything said about the men going back to work that night?

A. I heard the fellows working on the pork and beans, that is, they were supposed to go back to work right after the meeting.

Q. Did you see George Costa there?

A. I believe he was there.

Q. Did you see Clifford Algrava?

A. I believe he was there.

Q. Did you hear them say anything about the fact that Torenson said there wasn't going to be any night shift?

A. No, I didn't hear anything about that.

Q. Did you spend any time on the picket line?

A. About two weeks.

Q. And what were your duties, what were you supposed to do while you were there on the picket line?

A. Any trucks come in, to flag them and tell them there was a picket line there; that is all.

Q. What did you say—did you say anything else to them at all?

A. No.

Q. Did you ask them whether they belonged to a union or not? [588]

A. I did not.

(Testimony of Pasqual Arieta.)

Q. Did any of them go through after you stopped them?

A. Some of them did and some of them didn't.

Q. Do you know whether those that went through were union trucks, or whether they were not?

A. I do not.

Q. You didn't inquire of the truck drivers as to whether they belonged to the union?

A. No. I told them, "There is a picket line here, boys." That is all.

Q. What did you tell them—did you tell them who you were and what union you belonged to?

A. No, I didn't tell them anything like that. I didn't have a chance, because the cops would chase you away every time and you didn't get a chance to talk to them.

Q. Where would you stop these trucks, and how would you do that?

A. On East 14th Street.

Q. How would you stop them?

A. Flag them; stick out your hands, that is all.

Q. Would you get out in front of them?

A. No, I didn't get out in front of them. I just got in the gutter and flagged them.

Q. Did you go out in the street I mean?

A. No, I was in the gutter, foot of the gutter.

[589]

Q. There is only the one street, one way to get in and out of the plant, and that is on 57th Avenue?

(Testimony of Pasqual Arieta.)

A. Yes, 57th Avenue.

Q. Now, I understand you to say that you worked up to the time—up to what you refer to as the lockout, fourteen hours a day?

A. An average, yes. Sometimes maybe would work eight hours, and the next day would be fourteen and a half. But an average of fourteen hours a day for say about four or five weeks before the lockout, something like that. Maybe we would hit a day and would work eight hours, and the next day we would work fourteen.

Q. How about the week just before the meeting? Did you work fourteen hours a day that week?

A. I believe it was. I am not sure, but I think it was. I know we were working long hours. I can't tell you offhand the exact hours, but it was an average of fourteen hours a day. That is five months back and it is hard to remember.

Q. Well, I have got two time cards here for the week just before the initiation meeting. Did you make out more than one time card per day?

A. It all depends. Sometimes we would work for Santa Cruz and we would get through and we would go across to Stokely's, and we would sign two cards instead of one; one for Santa Cruz and one for Stokely. [590]

Q. Did you have as many as three time cards a day?

A. I don't remember.

(Testimony of Pasqual Arieta.)

Q. Your number is 1317, do you remember?

A. I don't remember.

Q. I show you a time card for the 1st of August, which shows ten hours—and what is that—ten and one-half hours?

A. (Examining time card) Right.

Q. And for the 2d there are two cards, one of them dated Pork and Beans, and the other one General Warehouse.

A. (Examining time cards) Yes.

Q. Indicating ten and one half hours, those two combined.

A. Yes.

Q. On the 3d, how much time on that card?

A. That is just the pork and beans. That is 2½ hours, but only for the pork and beans.

Q. Did you work more time on the 3d?

A. I think if you will look it up you will find it. I don't know, but I think so.

Q. There is no other card here for the 3d.

A. Well, I could give you a better record myself. I have got a little book at home that I kept every hour I worked, in.

Q. That might be better. Could you bring that here?

A. I can bring it in later.

Q. Apparently on the 4th you put in a lot of hours, 15½ hours, a combination of three cards. Why the three cards on [591] that day, do you know?

(Testimony of Pasqual Arieta.)

A. I don't know how that was, the three. I can't remember right off hand.

Q. And on the 5th there are two cards. What does that amount to—it says 3¹.

A. It means 3¼ hours.

Q. It would be 6¾ hours on the 5th.

And on the 6th, six hours.

A. That is just pork and beans. That is one card again.

Q. Well, I guess we had better check your record on that, if you will bring in your record.

A. My record don't show the difference between pork and beans. I kept my record in hours I worked.

Q. Total time?

A. Yes. There (indicating) you have the record of one working card, pork and beans, and you haven't the other records.

Q. That is why I say I would like to have your record so we can have a total time. Did you work longer hours than the others did?

A. No, about the same. As I say, toward the end we got three or four good weeks, about fourteen hours a day.

Q. That was a particularly busy season?

A. Yes, the busy season. Sometimes I would start at 6:30 or seven in the morning, and go home about a quarter after [592] ten.

Mr. St. Sure: That is all.

Redirect Examination

Q. (By Mr. Edises) What did Mr. Huddleson say about the union when he spoke to the boys on Monday?

(Testimony of Pasqual Arieta.)

A. He said he didn't want to have any union around his place, as long as he was general manager anyway; that maybe when he was gone, somebody else could have it if they wanted it, but he didn't want it as long as he was general manager there.

Q. Anything else?

A. That is about all I can remember right now.

Mr. Edises: That is all.

Recross Examination

Q. (By Mr. St. Sure) Did he tell you why?

A. He said he couldn't pay 62½ cents an hour.

Q. That is the reason, he told you, he didn't want the union, because he couldn't pay the 62½ cents an hour?

A. I guess so; I guess that is what he meant.

Q. Did he tell you he had no objections to unions as such, and that he had been a member himself once?

A. Yes, I believe he did.

Q. His whole discussion, and the reason he gave as to why he didn't want the union, was because he couldn't pay the amount of the demand while his competitors paid less, isn't [593] that right?

A. I don't know about his competitors paying less, because Del Monte was paying 40 cents and he was paying 35.

Q. Didn't he tell you that as far as he was concerned, there were 50 or more other canners in the state and he wanted to know why you picked on him first?

(Testimony of Pasqual Arieta.)

A. That is what he said, yes.

Q. Didn't he say he would pay what the others paid, if they all paid the scale?

A. I don't remember that.

Q. You don't remember?

A. No.

Mr. St. Sure: That is all.

Mr. Edises: That is all.

(Witness excused.)

Trial Examiner Traynor: We will recess until 2 o'clock.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m.)

After Recess

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Traynor: You may proceed.

Mr. Edises: Mr. Freitas. [594]

FRANK FREITAS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Frank Freitas.

Q. Where do you live?

A. 1233-78th Avenue.

(Testimony of Frank Freitas.)

Q. Are you married?

A. I am.

Q. Any children?

A. One.

Q. How old are you?

A. How old am I?

Q. Yes.

A. Twenty-eight years old.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. How long had you been working for them before the lockout?

A. Ten days.

Q. Did you ever work for them before?

A. No.

Q. Who hired you?

A. Ernie Reich. I was over at Packwell. I was working there at the time and he got me to come over and work there with the agreement, no written agreement, but with an agreement from [595] Torenson that I would work during the winter and fall at 40¢ an hour.

Q. In other words, you understood that you were being given steady work?

A. Yes.

Q. And not seasonal?

A. No; otherwise, I wouldn't have left my job.

Q. When did you first hear about the union?

A. The 3d of August.

Q. And under what circumstances?

A. What do you mean?

(Testimony of Frank Freitas.)

Q. How did you happen to hear about it?

A. I was working on a casing machine. I was casing in and Connie Martin was nailing, and he said they were organizing a union there and that if I would like to get in. And I agreed with him.

Q. Did you speak to Mr. Anger?

A. I did; I signed an application with him.

Q. When did you get your union button?

A. I think it was on Tuesday, the 6th.

Q. Were you there on Monday when Mr. Huddleson spoke to the men?

A. I was.

Q. Were you wearing your union button? [596]

A. No, I didn't have any.

Q. What time did you knock off on Wednesday?

A. 4:30.

Q. And how did you come to do that?

A. Bob came around and he told us that he had spoken to Stanley Torenson and Stanley said it was O. K. for us to leave.

Q. Did you go to the meeting that night?

A. I did.

Q. And did you show up the next morning and try to go to work?

A. I did. I was about one of the first ones there.

Q. What did you find when you got there?

A. I drove up in my car and there was a big fat watchman—I don't know his name as I was new on the job—and he told me that. I couldn't park there that morning.

I said, "Why not?"

(Testimony of Frank Freitas.)

He said, "There is going to be some trouble around here and I want to clear it to do some straight shooting."

Q. Will you take your job back if it is offered to you?

A. I will.

Mr. Edises: That is all.

Cross-Examination

Q. (By Mr. St. Sure) You just came to Santa Cruz, you say, ten days before?

A. Yes, ten days before the lockout. [597]

Q. Why did you join the union?

A. Why, for better conditions. You can't live off of 35¢ an hour all your life.

Q. You say you came from the Packwell with the understanding you were to be paid how much at the Santa Cruz?

A. 40¢.

Q. Were you satisfied with that, when you left Packwell to come to Santa Cruz?

A. It is a nickel more; who wouldn't for a nickel more?

Q. I don't know. I think I would if I could get it. But my point is that ten days before the lockout, as you say, you took this new job and then you joined the union four or five days after you had come to Santa Cruz to better your situation, is that it?

A. That is right.

Q. When you talked with Martin about the fact, or he mentioned to you that the union was being or-

(Testimony of Frank Freitas.)

ganized, did he tell you what they were going to try to accomplish, what the union was going to try to do?

A. He said we would get more money and less hours.

Q. Did he tell you what demand was going to be made, or what request was going to be made for more money, how much more was going to be asked for?

A. No, he didn't.

Q. Did he tell you what the union was going to do or how the [598] union was going to accomplish this matter of improving conditions?

A. He said they were organizing a union and if I wanted to get into it.

Q. You went to the initiation meeting on Wednesday night?

A. Yes I did.

Q. And did you hear any discussion about what Mr. Huddleson had said on Monday night?

A. No, I didn't hear anything—Monday night you mean or at the meeting Wednesday?

Q. On Wednesday, at the meeting, did you discuss what had happened on Monday night?

A. No.

Q. Between the Monday night meeting and the next meeting Wednesday night, did you talk to any of the men you were working with about what Mr. Huddleson had said on Monday night?

A. No, I didn't. In fact, I didn't know any of them. The only one I knew was Ernie Reich. I didn't speak much to the men.

(Testimony of Manuel Blanco.)

Mr. St. Sure: I think that is all.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: Manuel Blanco.

MANUEL BLANCO,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

[599]

Direct Examination

Q. (By Mr. Edises) Your name is Manuel Blanco?

A. Blanco, yes.

Q. And where do you live?

A. 596 Estabrook Street, San Leandro.

Q. Are you married?

A. Yes.

Q. Any children?

A. Plenty—four.

Q. When did you go to work for Santa Cruz?

A. I imagine about two and one-half years ago.

Q. Who hired you?

A. Stan Morris.

Q. Stan Morris?

A. Yes.

Q. I thought he was manager for Stokely?

A. He was warehouse boss at that time.

(Testimony of Manuel Blanco.)

Q. What?

A. He was in charge of the Santa Cruz warehouse during that time.

Q. At that time?

A. Yes.

Q. And was he later transferred to Stokely?

A. Yes sir.

Q. And he is now in charge at Stokely? [600]

A. He is.

Q. And what work did you do in the Santa Cruz plant?

A. Running the labeling machine, operator.

Q. What is that?

A. Label machine operator.

Q. Did you do anything else?

A. While there was no labeling, I done everything and anything in general.

Q. You were shifted around from one job to another?

A. Yes.

Q. Did you do any loading into box cars?

A. I did.

Q. And into trucks?

A. I did.

Q. When did you apply for membership in the union?

A. I imagine, I applied, I think it was the 7th month and the 23d day—July 23d.

Q. July 23d?

A. Yes.

Q. And had you ever belonged to a union before?

(Testimony of Manuel Blanco.)

A. Never did.

Q. What was your purpose in applying for membership in the union?

A. Well, for better living conditions, by rights.

Q. You thought that the union would obtain better conditions for you? [601]

A. Well, at least it was going to try to anyway.

Q. Did you expect the union to act as your representative in negotiating with the company for better working conditions?

A. I did.

Q. After the time when you applied for membership in the union did you ever hear any of the boys discussing a strike or walkout?

A. Never did.

Q. Was that matter ever brought up at the union meeting?

A. Never did.

Q. Previous to the time that you joined the union, or applied for membership, had you ever asked Mr. Huddleson or any of the officials of the plant, for a raise in wages?

A. No, I didn't do it, from July 23d to the time of the lockout but I had done it about four or five months ago.

Q. Did you apply by yourself?

A. I did, but I applied to the superintendent.

Q. To the superintendent?

A. Yes.

Q. And during your experience at the Santa Cruz, during the period of your employment at Santa Cruz or Stokely, did you ever know of any

(Testimony of Manuel Blanco.)

organized demand by the men, or by a group of the men, for better working conditions or higher wages?

A. Well, the only time I heard anything was since I signed up my application; before that I didn't hear of anything.

Q. When did you get your union button? [602]

A. I believe I got it on Monday.

Q. August 5?

A. Monday, the 5th, yes.

Q. And were you there Monday, around 6 o'clock, when Mr. Huddleson spoke to the men?

A. I was.

Q. How did you hear about that meeting?

A. Well, we went for supper, and we came back from supper, my gang and I were going back to work with the labeling machine, and we were working on the Stokely side——

Q. (Interrupting) Were you on the day shift?

A. I was on the day shift, yes. So when we were going over to the labeling machine to start work after supper, the boss himself called us back and told us to come back to the regular Santa Cruz warehouse, that Mr. Huddleson wanted to speak to us.

Q. Had Mr. Huddleson ever called the men of the warehouses together before to speak to them for any purpose?

A. Never did.

Q. Now, did he say anything about the union in that speech?

A. Well, he did.

Q. What did he say?

(Testimony of Manuel Blanco.)

A. He said, as far as the union was concerned, it was a bright idea on our part.

Q. Said it was what?

A. A good idea on our part; that he had been a union man [603] for quite a while himself, and as far as our part was concerned we were all right, but as far as his part was concerned that he wouldn't be able to see it as long as he was general manager.

Q. He said he wouldn't be able to see it—just what do you refer to?

A. Well, that he wouldn't, in other words, he wouldn't have the union in his plant at all.

Q. Do you remember anything else that was said in that meeting?

A. Well, yes; quite a few things were said. In fact, there was once when he said that he wouldn't make himself the goat by being the first one to recognize the union at all.

Then there was a party there, one of our boys, who said, "Well, we ought to get started some place and if you start in your plant, if you could sign up, why probably the others will follow in later."

Then he said he would be a fine son of a bitch of a sucker if he would do such a thing as that.

Q. What did he say about wages?

A. Well, he said that the rest of the companies would not pay it so he wouldn't do it himself by no means.

Q. Did he say he knew what the union scale was?

(Testimony of Manuel Blanco.)

A. He did.

Q. Did he say that he was giving you a day or two to think it over? [604]

A. He did say that.

Q. Do you remember just how he said it?

A. Well, I couldn't remember just now. All I know is that he said he would give us a day or so to think it over.

Q. Did he set a particular day by which time you would have to tell him what you had decided on?

A. He never did.

Q. Do you know Mr. Gomez?

A. Well, I wouldn't guarantee that I know him if I would see him. I seen him all right. I don't say I know him. I was in charge of the labeling, that machine, and I had enough of trouble of my own at the time.

Q. Did you go to the meeting Wednesday night?

A. I did.

Q. Who told you about the meeting?

A. Bob Anger.

Q. And when did he tell you about it?

A. I wouldn't say just what time. He told me in the morning though; it was before noon when he told me about it.

Q. Did he say anything about having gotten permission to leave?

A. He did. I told him, "How do you know that we are going to shut up at 4:30 when we work later other days?"

(Testimony of Manuel Blanco.)

He said he had spoken to Mr. Torenson and Mr. Torenson thanked him very much for letting him know ahead of time. [605]

Q. You went to the meeting that night?

A. I did.

Q. What was the purpose of the meeting?

A. Well, to have us initiated by rights.

Q. And was anything said about the negotiations with Santa Cruz?

A. Well, all I heard was that one of our business agents had gone to see Mr. Huddleson personally.

Q. Did you hear that at the meeting or when did you hear that?

A. Well, I heard that the same day, but not at the meeting, though.

Q. Who told you about that?

A. Well, I think it was Bob Anger, the one that told me that.

Q. Bob Anger?

A. Yes.

Q. Did he tell you anything else at the time?

A. No, not that I remember.

Q. What was done at the meeting Wednesday night?

A. They read us the agreement.

Q. Do you remember who read the agreement?

A. By gosh, I don't; I just couldn't say.

Q. What else was done? You had the initiation, didn't you?

A. We did. [606]

Q. Did some of the union officers make speeches?

(Testimony of Manuel Blanco.)

A. Well, I think there was one who made a little speech, Tarling.

Q. And did Mr. Woods speak?

A. I don't remember if he did or not.

Q. Were you paying very close attention to what was going on?

A. I tell you I wasn't paying so much attention at all, because it was the first time I joined the union, you might say, and I didn't know much about it so I didn't pay much attention.

Q. You didn't pay much attention about what was going on, is that it?

A. That is it.

Q. Had you been told, or had you learned in any way, or did you have any idea that you would not be permitted to return to work the next day?

A. No sir.

Q. Did you show up for work the following morning?

A. I did.

Q. Did you try to get in?

A. I did.

Q. Did you succeed?

A. No, never did. In fact, as I was going in the warehouse door, where always I was going in for the last two and one- [607] half years, somebody hollered—I don't know who it was—and said, "There is no use you trying to get in; there is no way of getting in."

Q. Do you know who is running the warehouses now?

A. I couldn't say.

(Testimony of Manuel Blanco.)

Q. Would you take your job back if it is offered to you?

A. I will.

Mr. Edises: No further question.

Cross-Examination.

Q. (By Mr. St. Sure) You say you didn't have any idea that you might not be allowed to return to work. After Mr. Huddleson talked to the men on Monday night did you think that he meant what he said when he said he couldn't pay the 62½¢ an hour?

A. Well, no, I didn't really think he meant it so strongly as he did.

Q. Didn't he say that if the men weren't satisfied with what he was paying, and was able to pay, that he would have a contractor to come in; that he had a contractor who said he could do it for less —did he tell you that?

A. I heard him mention about a contractor, all right.

Q. What rate were you paid there?

A. Forty cents an hour.

Mr. St. Sure: I think that is all. [608]

Redirect Examination.

Q. (By Mr. Edises) At that meeting when Mr. Huddleson spoke to you and the other men—withdraw that question——

Mr. Edises: I have no further questions.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Mr. Gardner.

ORVILLE GARDNER,

called as a witness for the National Labor Relations Board, after being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) Your name is Orville Gardner?

A. Yes sir.

Q. And you are the person designated in the complaint as Orville Gordon?

A. Yes.

Mr. Edises: With the Examiner's permission, I would like to suggest an amendment to conform to the proof of the spelling of this man's name, G-a-r-d-n-e-r, in the various places in the complaint where it is referred to as Orville Gordon.

May that be done?

Mr. St. Sure: Yes, whenever the name "Gordon" appears in the complaint, or the answer, it may be understood to refer to "Gardner." [609]

Trial Examiner Traynor: So understood.

Q. (By Mr. Edises) Where do you live?

A. 1458—56th Avenue.

Q. Oakland?

A. Yes.

Q. Are you married?

A. Yes sir.

Q. Any children?

A. No.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

(Testimony of Orville Gardner.)

Q. When did you go to work for them?

A. About three years ago.

Q. What was your job?

A. Stitching cases.

Q. What else?

A. And driving an electric truck.

Q. Did you do any loading?

A. No.

Q. You never did any loading?

A. No.

Q. What kind of work did you do with the electric truck?

A. I hauled pork and beans from the Santa Cruz warehouse over to the Stokely warehouse.

Q. What was done to them then at Stokely's?

[610]

A. Stacked in piles.

Q. Stacked and subsequently loaded, is that correct?

A. Yes.

Q. When did you apply for membership in the union?

A. The latter part of July.

Q. Through Mr. Anger?

A. Yes sir.

Q. When did you get your button?

A. It was on Tuesday morning.

Q. Tuesday morning?

A. Yes sir.

Q. Were you there Monday when Mr. Huddleson spoke to the men?

(Testimony of Orville Gardner.)

A. I was.

Q. Were you at the meeting Wednesday night?

A. Yes sir.

Q. Who told you about the meeting?

A. Mr. Anger.

Q. And what did he tell you?

A. He told me to be sure to be at the meeting that night.

Q. Well, hadn't you been working nights?

A. I had.

Q. Well, how did it happen—did he say anything about how come you were to get off at 4:30?

A. I was working nights. I didn't have to get off. I [611] didn't come to work until 6 o'clock.

Q. Pardon me, I understood you were working days. Can you tell us exactly what was said when Mr. Anger told you about the meeting?

A. He told me to be sure to be at the meeting that night; that is all.

Q. Did you attend the meeting?

A. I did.

Q. And when did you show up to go to work again?

A. Well, I had Wednesday night off. I had asked for permission to have that night off.

Q. So that you were not at the plant the following morning when the other men were?

A. No. I didn't go to work until Thursday evening. When I went down to work I ran into the picket line and the boys told me what had happened, so I didn't go on down.

(Testimony of Orville Gardner.)

Q. Will you take your job back if it is offered to you?

A. I would.

Mr. Edises: That is all.

Cross-Examination.

Q. (By Mr. St. Sure) When you went back Thursday evening, as I understand it, you got as far as the picket line and then you didn't go any farther, didn't go down to the plant at all?

A. That is right. [612]

Q. You say you had permission to be away Wednesday evening. Who did you receive that permission from?

A. Mr. Torenson.

Q. Did you ever ask Mr. Torenson about whether or not your job was there waiting for you, whether you could go back to it?

A. I never seen him since.

Mr. St. Sure: That is all.

Redirect Examination

Q. (By Mr. Edises) When did you get permission from Mr. Torenson?

A. Got it Tuesday morning.

Q. What was your reason for asking to get off Wednesday night?

A. Well, there wasn't much to do that night, as far as the electric truck was concerned, so I asked for that night off.

(Testimony of Orville Gardner.)

Q. Did that have anything to do with the union meeting?

A. No sir.

Mr. Edises: That is all.

Mr. St. Sure: No further questions.

(Witness excused)

Mr. Edises: Mr. Venturi.

FRED VENTURI,

called as a witness for the National [613] Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) Where do you live?

A. 1630-61st Avenue.

Q. Are you married?

A. Yes.

Q. Any children?

A. One.

Q. How old?

A. Two years old.

Q. Do you work for the Santa Cruz or Stokely?

A. I work for Stokely most of the time, but at the time of the lockout I was working for Santa Cruz.

Q. How did you happen to be transferred from Stokely to Santa Cruz?

A. They were pretty busy over there and needed men on the labeling machines.

(Testimony of Fred Venturi.)

Q. Who told you to go over?

A. Ernie Reich.

Q. Ernie Reich was not the manager of the Stokely plant, was he?

A. He was an assistant warehouse foreman.

Q. That was at the Santa Cruz plant, was it not?

A. Yes. [614]

Q. Well, did he have authority over Stokely men as well?

A. No, but the foremen got together and they used to help each other out with the men.

Q. What was your job at Stokely?

A. I worked the labeling machine most of the time, but I used to load cars, stack cases—and do everything from sweeping the floor to polishing the boss' shoes.

Q. What was your usual quitting time?

A. We had no regular quitting time.

Q. What time did you quit on Wednesday, August 7?

A. 4:30.

Q. And how did you happen to do that?

A. Bob Anger told us we had permission to leave at 4:30 from Stan Torenson.

Q. There has been testimony by previous witnesses at the Stokely warehouse that the reason that they knocked off at 4:30 was because the work was finished at that time.

A. I was in the Santa Cruz.

(Testimony of Fred Venturi.)

Mr. St. Sure: He was in Santa Cruz.

Mr. Edises: Pardon me.

Q. (By Mr. Edises) When did you apply for membership in the union?

A. In the latter part of July; I don't remember what date.

Q. When did you receive your button?

A. I believe it was on Monday. [615]

Q. What wages were you getting?

A. Thirty-five cents an hour.

Q. And how many hours were you working?

A. Anywhere from 8 to 16. I have worked as high as 23 hours in one day.

Q. Was that during the busy season?

A. Yes.

Q. During the summer of 1935?

A. During 1935, yes.

Q. Were you there on Monday when Mr. Huddleson spoke to the boys?

A. Yes I was.

Q. And were you present Wednesday night at the initiation meeting?

A. I was.

Q. Did you show up Thursday morning to go back to work?

A. Yes I did at 6:30 in the morning. I drove down there and the watchman told me I couldn't park my car there. I asked why and he said, "There will probably be some shooting going on around here."

(Testimony of Fred Venturi.)

So I took my car out of there.

Q. Would you like to have your job back?

A. I would.

Q. Would you take it if it were offered to you?

A. I would. [616]

Mr. Edises: That is all.

Cross Examination

Q. (By Mr. St. Sure) Have you, since the 8th of August or since the night of the initiation, inquired of the foreman, or of any one else in connection with either Stokely or Santa Cruz, whether you could have your job back?

A. No, I haven't seen any of them.

Q. What do you recall was said by Huddleson on this Monday evening?

A. He said he wouldn't recognize any union in his plant; that he wouldn't be the first one to recognize the union.

Q. Did he give any reason for that?

A. Well, he said he couldn't afford to pay that wage, union wage scale. I don't remember what else he said.

Q. Did he say anything about the matter of competition, what other canneries were paying, whether that had anything to do with it or not?

A. Yes, he did mention something about that, that the other canneries weren't paying any more than he was—but I think most of them were.

Mr. St. Sure: I will ask that that last go out as a conclusion.

(Testimony of Fred Venturi.)

Mr. Edises: That may go out, as far as I am concerned.

Q. (By Mr. St. Sure). Did he mention anything about having a contractor who said he could do the work for less than you [617] were doing it come in?

A. Yes, he said if we thought we could get a better job to get out of there and he would bring a contractor in to do the work we were doing.

Q. Did he say anything about your thinking it over or talking it over and letting him know what you wanted to do about it?

A. Yes, he mentioned for us to think it over and either stay with the union or stay with him.

Q. Do you think he meant that?

A. Well, I found out Thursday morning that he did, yes.

Q. Up to that time you thought he was just fooling?

A. No, I didn't exactly think he was fooling but I gathered he didn't want to pay more than 35¢ an hour.

Q. Some of the men, in fact, were being paid more than 35¢ an hour in the warehouse?

A. About two or three that I know of.

Q. Some were being paid 45¢?

A. None that I know of.

Q. Now, at the meeting on Wednesday night—withdraw that—I gather that Mr. Huddleson on Monday evening was rather forceful in his remarks,

(Testimony of Fred Venturi.)

was he? He didn't mince words about what he had in mind and about what his views were?

A. He spoke rather stern all right, yes.

Q. And your impression, at least, was that he was, or had rather set opinions in the matter he was talking about? [618]

A. The impression I got was that if we weren't satisfied with 35¢ an hour and the working conditions we were working under; we could quit; that is the impression I got.

Q. And then when you went to the union meeting on Wednesday night was anything said at all by any of the men there about what might follow from your going on with the union membership?

A. No.

Q. Was anything said at all about what Mr. Huddleson said to you about his not being able to pay more than he had paid or was paying?

A. No.

Q. You don't recall a discussion of that at the union meeting?

A. No.

Mr. St. Sure: I think that is all.

Redirect Examination

Q. (By Mr. Edises) These two or three men that you refer to as receiving more than 35¢ an hour, what were they getting.

A. They were getting 40¢, I think. I wouldn't say for sure, but I think it was 40¢.

(Testimony of Fred Venturi.)

Mr. St. Sure: The time cards show the rate. They are all here and can be referred to.

Mr. Edises: That is all.

(Witness excused)

Mr. Edises: May we have a 3 minute recess? [619]

Mr. St. Sure: Make it 5 minutes.

Trial Examiner Traynor: We will take a 5 minute recess.

(At this point a recess was taken after which proceedings were resumed as follows:)

Mr. Edises: In view of the unavailability of certain witnesses, who had been requested and instructed to be here this afternoon, I wish at this time to propose an adjournment until the next session of this body.

Our previous practice has been to hold a Saturday morning session, but in view of the necessity of serving a subpoena, which must be prepared during the interval, and in view of Mr. St. Sure expressing a desire to have it continued until Monday, I should like to make a formal motion that the hearing be adjourned until Monday morning at 10 o'clock.

Trial Examiner Traynor: Motion granted. Hearing adjourned until 10 o'clock Monday morning.

(Thereupon, at 2:50 o'clock p. m., the hearing in the above entitled cause was adjourned until 10 o'clock a. m. Monday, January 6, 1936. [620]

Board of Supervisors' Room
Hall of Records
Alameda County
Oakland, California

Monday, January 6, 1936.

Met, pursuant to adjournment, at 10:10 o'clock a. m.

PROCEEDINGS

Trial Examiner Traynor: You may proceed.

Mr. Edises: Mr. Toresen, take the stand.

KENNETH TORESEN,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows: [621]

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Kenneth Toresen.

Q. How do you spell your last name?

A. T-o-r-e-s-e-n.

Q. T-o-r-e-s-e-n.

A. Yes sir.

Q. Are you married?

A. No.

Q. Did you work for Santa Cruz or Stokely?

A. Santa Cruz.

Q. When did you go to work there?

A. About two and one-half years ago.

Q. And what was the nature of your work?

(Testimony of Kenneth Toresen.)

A. Well, I did a little of everything; worked on the label machines and helped the printer.

Q. Did you do loading?

A. Once in awhile.

Q. Did you change around from one job in the warehouse to another?

A. Yes.

Q. When did you apply for membership in the union?

A. I cannot think of the date.

Q. Was it sometime prior to the lockout?

A. Yes sir. [622]

Q. And were you present on Monday, around 6 or 6:30 p. m., on August 5 when Mr. Huddleson spoke to a group of the men?

A. Yes sir.

Q. And how did you learn about the meeting.

A. Well, I came back after supper there and the boss, Stan, said there was going to be a meeting, that he wanted to talk to us; so we waited around there.

Q. Were you wearing your union button at the meeting?

A. I was.

Q. Do you remember what Mr. Huddleson said about the union at that time?

A. I can't remember much of what he said. I understand he wouldn't have nothing to do with the union; that if we wanted to join the union we were just through.

(Testimony of Kenneth Toresen.)

Q. That is the general substance of his speech?

A. That is the way I got it, yes.

Q. Do you remember his saying anything about thinking it over?

A. Yes, he said he would give us a couple of days to think it over.

Q. What did he want you to think over?

A. If we wanted to join the union or stay in the cannery.

Q. Did he give you any specific day by which you had to make up your minds? [623]

A. No; he just said a couple of days.

Q. Did you go to the initiation meeting on Wednesday night, August 7th?

A. I did.

Q. How did you learn about the meeting?

A. Well, from Bob Elder.

Q. You mean Anger?

A. Anger, yes; he told me about 11 o'clock that he had permission to get off.

Q. Were you on the day shift?

A. Yes.

Q. You say that he had permission to get off. Did he say from whom he had obtained permission?

A. He said it was from the boss.

Q. From the boss?

A. Yes sir.

Q. The Boss is Stan Toresen, is it not?

A. Yes sir.

(Testimony of Kenneth Toresen.)

Q. Are you related to him?

A. I am.

Q. What is your relationship?

A. Brother.

Q. Do you live at the same place he does?

A. No, I don't.

Q. Did you at the time of the lockout or prior to it? [624]

A. No.

Q. Have you ever spoken to your brother, Stan, about the lockout?

A. No, we never talk about it when he comes over to the house.

Q. You say you never talk about it when he comes over to the house?

A. No.

Q. Do you know Manuel Gomez?

A. I do when I see him.

Q. Did you see him around the Santa Cruz plant at any time prior to the lockout?

A. Yes sir.

Q. When was that?

A. I saw him Monday, Tuesday and Wednesday that week.

Q. Did you have any conversation with him on any of those occasions?

A. No, I didn't.

Q. What did you see him doing?

A. Saw him walking around a couple of days, and saw him over by the labeling machine.

Q. Did your brother ever tell you anything about Gomez?

(Testimony of Kenneth Toresen.)

A. No.

Q. Did you ever ask him anything about him?

A. No. [625]

Q. Had you ever seen Gomez around the plant prior to Monday, August 5th?

A. I am not sure if I did or not.

Q. Did you do picket duty?

A. Yes.

Q. Did you ever commit any act of violence?

A. No.

Q. Did you flag trucks?

A. Yes.

Q. Did you ever threaten any truck drivers?

A. No.

Q. If the Board orders your reinstatement will you take your job back?

A. I will.

Mr. Edises: That is all.

Cross-Examination.

Q. (By Mr. St. Sure) At this meeting on Monday night did Mr. Huddleson say anything about the wage that was being demanded?

A. Yes.

Q. What did he say about that?

A. He said he couldn't afford to pay it.

Q. Did he say why he couldn't?

A. He just said he would be out of the cannery business if he had to pay it. [626]

Q. Did he mention the fact that there were some fifty other canneries in the state, and did he ask why you picked on him first?

(Testimony of Kenneth Toresen.)

A. Yes.

Q. Did he say anything about having a contractor to come in and take the work over for less money if you insisted on the demands for 62½¢?

A. I don't remember him saying that.

Q. Did he say something about, if you insisted on that wage demand, that you could go out one door and he would have a contractor come in the other?

A. Yes.

Q. Did you think he meant it?

A. I don't know if he did or not; I guess he must have.

Q. What were your duties supposed to be as a picket?

A. Just walk up and down there to try to stop trucks.

Q. What happened at the meeting on Wednesday night? Just tell, if you can, what happened there, if you remember?

A. We got initiated.

Q. Well, when you went in the meeting did anything happen before the initiation, or was there any discussion or anything of that kind?

A. Not that I remember. I can't remember any.

Q. Did you know that before the initiation meeting, on Wednesday night, a form of contract had been sent to the manage- [627] ment of the Santa Cruz plant?

A. I don't know. That was up to our spokesman.

(Testimony of Kenneth Toresen.)

Q. Who was your spokesman?

A. Bob Anger.

Q. Did you know that a contract was to be sent to the management of the Santa Cruz plant on behalf of the union?

A. I knew about it; I heard about it at the initiation meeting.

Q. Before that time you hadn't heard about it, is that right?

A. Not that I can remember.

Q. Do you know what was in that contract?

A. All I know is that we were supposed to get 62½¢ an hour and shorter hours; 8 hours a day.

Q. Did you ever hear it read?

A. I heard it read but I can't remember much of it.

Q. Pardon me?

A. I can't remember much about it.

Q. When did you first hear it read?

A. I heard it read at the initiation meeting.

Q. Do you know who read it?

A. I think Bob Anger did.

Q. Was there any discussion about it as to its terms, or whether it would be accepted, or what would happen if it were? [628]

A. No.

Q. Did anybody say anything at all about that?

A. Not that I can remember.

Q. At the meeting on Wednesday night was anything said at all about the Monday night meet-

(Testimony of Kenneth Toresen.)

ing, as to what Mr. Huddleson had said or whether he meant what he had said?

A. Not that I remember.

Mr. St. Sure: I think that is all.

Mr. Edises: That is all.

(Witness excused.)

Mr. Edises: August Sannebeck.

AUGUST SANNEBECK,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Edises) What is your address, Mr. Sannebeck?

A. 7123 Holly.

Q. Are you married?

A. No sir.

Q. Did you work for Santa Cruz or Stokely?

A. I worked for Santa Cruz.

Q. When did you go to work for them?

A. Sometime the first of March.

Q. Of 1935? [629]

A. 1935, yes.

Q. When did you apply for membership in the union?

A. I couldn't say for sure on that. It was about——

Q. (Interrupting) Was it about the same time most of the other men did?

(Testimony of August Sannebeck.)

A. Yes.

Q. Around the middle of July, 1935?

A. About the same time as the rest of them.

Q. What was the nature of your work at Santa Cruz?

A. Well, most of it was all-around work in the warehouse. I worked on the label machine and everything.

Q. Did you load cars and trucks?

A. Yes sir, I did.

Q. And were you moved about from one job to another at various times of the day and from day to day?

A. Yes sir, I was. I worked on the night crew quite a bit.

Q. You were on the night crew?

A. Yes.

Q. Were you working on the night crew just prior to the lockout?

A. Yes sir, I was.

Q. Did you go to the initiation meeting Wednesday night?

A. I did, yes.

Q. Who told you about the meeting?

A. Bob—what is his name? [630]

Q. Anger?

A. Yes sir.

Q. When did he tell you about the meeting?

A. Nothing; he just told me there was going to be an initiation meeting.

(Testimony of August Sannebeck.)

Q. I say when did he tell you?

A. When did he tell me?

Q. Yes.

A. Well—— (pause)

Q. Were you with Mr. Pio and Mr. Doyle when he told you about the meeting?

A. I know I was with Mr. Doyle.

Q. Was that just as you were getting off shift Wednesday morning?

A. Yes sir, I believe it was.

Q. And will you state now just what Mr. Anger told you?

A. I couldn't state it right out. He says that there was a meeting that night at the hall.

Q. Did he tell you the time?

A. I think he said 7 o'clock; I am not sure.

Q. Did you go to the meeting?

A. Yes sir.

Q. You didn't go at 7 o'clock, did you?

A. Yes sir, I did.

Q. Seven o'clock? [631]

A. Yes.

Q. Did you speak to Mr. Toresen before leaving the plant Wednesday morning in regard to the meeting that night?

A. Well, no sir. That night, when we came on that night Mr. Toresen told us that we could go to the meeting and then come back and go to work.

Q. Well, when did he tell you that?

A. That was just after Mr.——

Q. (Interrupting) Anger?

(Testimony of August Sannebeck.)

A. (Continuing) ——Huddleson's talk.

Q. Now, have you been to any of these sessions before in which the men have testified?

A. No.

Q. Do you remember those dates very distinctly? Mr. Pio and Mr. Doyle and the rest of the men, have testified that they spoke to Mr. Anger, rather, yes, to Mr. Anger, on Wednesday morning as they were getting off shift, that they spoke to Mr. Toresen shortly after that on Wednesday morning. You state that you spoke to Mr. Toresen about getting off on Monday night. Do you know at which time you did speak to him?

A. (Pause)

Q. Or can't you remember definitely?

A. No. It was at the same time that Mr. Doyle talked to him anyway. [632]

Q. And was that the morning of the initiation meeting?

A. Well, that was—anyway, it was the morning of Mr. Huddleson's talk, or the initiation meeting. I have got that mixed up there.

Q. Is your recollection of those events rather confused?

A. Yes, it is quite confused.

Q. Do you remember what Mr. Toresen said to you when you spoke to him about getting off?

A. Well, he said for us to go to the meeting and then come back and go to work.

Q. And did you come back and go to work after the meeting?

A. Yes sir.

(Testimony of August Sannebeck.)

Q. Do you remember about what time that was?

A. I should judge around 8:30; some place in there. I don't know for sure.

Q. Now, will you tell us just what happened when you showed up for work that night after the meeting?

A. We came up 57th Avenue and parked the car, and when we parked the car we started to go toward the door and two fellows came down the street. It looked like, it could have been a tear gas gun or a shot gun—I don't know for sure—that they had in their hands and they yelled to us and they says, "Where are you going?"

At that time we knocked at the door and the light shown on our face and they said, "O. K. these two fellows." [633]

And then Mr. Gomez opened the door and we asked for Mr. Toresen. He says Mr. Toresen wasn't around then.

Just at that minute Mr. Toresen showed up and he says, "I told some fellows to tell you down at the meeting you needn't come back to work."

And so we says, "O. K.," and jumped in the car and went home.

Q. Didn't you say anything to Toresen about his having told you previously to come back after the meeting?

A. Yes, we said, "You told us to come back."

He said, "Well, I told some fellows to tell you at the meeting not to come back to work."

Q. Did he say why he changed his mind, or his action?

(Testimony of August Sannebeck.)

A. No. That is all that was said.

Q. Did you show up the following morning at the plant?

A. The following morning?

Q. Yes.

A. Yes.

Q. What time?

A. I don't know for sure.

Q. Did you try to get in?

A. No I didn't.

Q. Why not?

A. I knew there was no use.

Q. Did you see the pickets there? [634]

A. Yes sir.

Q. Did you see the watchmen?

A. No.

Q. If the Board orders you reinstated would you accept your job back?

A. Yes sir.

Mr. Edises: That is all.

Cross-Examination.

Q. (By Mr. St. Sure) Did you go to the plant before the initiation meeting that night, that is, before you went to the initiation meeting?

A. Yes sir, I went to work.

Q. What time did you go to work that night, Wednesday night?

A. Six o'clock.

Q. What?

A. Six o'clock.

(Testimony of August Sannebeck.)

Q. And what time did you leave there?

A. To go to the meeting?

Q. Yes.

A. I couldn't say for sure. I don't know.

Q. You say you got to the meeting at 7 o'clock?

A. I said I thought that was the time.

Q. Have you any recollection of how long you worked that night? [635]

A. No sir, I haven't.

Q. You are sure you worked that night before the initiation meeting?

A. Yes sir.

Q. Who else worked there with you?

A. I don't know all their names.

Q. Well,——

A. (Interrupting) Mr. Doyle worked with me.

Q. Do you remember that he worked there that night?

A. Yes.

Q. How about Clifford Algrava, did he work there that night before the meeting?

A. I couldn't say.

Q. How about Costa, did he work there?

A. I don't believe I know him.

Q. What particular job were you doing on the night shift?

A. Well, then I was trucking and casing in. I was doing all jobs at night.

Q. Did you see Ernie Reich there that night before the meeting?

A. Yes sir.

(Testimony of August Sannebeck.)

Q. Did he work that night before the meeting?

A. I don't know.

Q. Pardon me?

A. I don't know. [636]

Q. Well, was the full crew, as far as you can remember, working there before the meeting that night?

A. Well, I saw quite a few of them around there.

Q. At any rate, you weren't the only one working that night before the meeting?

A. Before the meeting down at the hall?

Q. Yes.

A. No, not that I can recollect.

Q. As far as you can recall, all the rest of them that normally worked there at nights were working there just as you were?

A. On our special crew, yes.

Q. Who was on your special crew?

A. Well, as I say, I don't know them all.

Q. Who were some of them?

A. There was Mr. Doyle and Al—I don't know Al's last name.

Mr. Edises: Pio?

Q. (By Mr. St. Sure) Pio?

A. I don't know if that is his name or not.

Q. You don't recall how long you worked there that night in any event?

A. No.

Q. When you left did you see anybody when you were leaving?

A. Not that I could see. [637]

(Testimony of August Sannebeck.)

Q. Did you see Mr. Toresen?

A. Not as I was leaving, no sir.

Q. You say Toreson told you you could go to the meeting and then come back to work. When, do you remember, his telling you that?

A. As I remember, he told me that night that we went to the meeting.

Q. That same Wednesday night?

A. Well, it was the night—what night would that be, let's see—it was the same night that we came back from the initiation meeting to the cannery. That would be Wednesday.

Q. Do you remember who was there when he told you that, if any one was there?

A. No, I don't.

Q. Did you see Ernie Reich at the meeting Wednesday night, at the initiation meeting?

A. I don't know if he was or not.

Q. Do you remember Ernie Reich, or any one else there at the initiation meeting, saying that Toresen had told him that evening that all the men that went to he meeting needn't come back to work?

A. No sir.

Q. Well, when you went back after the meeting you saw Toresen, and he said that the job was gone, or something of that kind? What did he say to you? [638]

A. He said that he sent somebody down to the meeting to tell us that we needn't come back to work.

(Testimony of August Sannebeck.)

Q. What did you understand, that you had no more job?

A. Yes, that is as I understood it.

Q. And how did you happen to go back the next morning?

A. Well, I was just coming back to see the fellows; that is all.

Q. What time did you get down there the next morning?

A. I couldn't say.

Q. Do you remember what happened at this meeting on Wednesday night?

A. What meeting is that?

Mr. Edises: The initiation meeting.

Q. (By Mr. St. Sure) Well,——

A. The initiation meeting?

Q. Yes.

A. Nothing that I can remember, only that they were initiated.

Q. How long did the meeting last?

A. I should say an hour or so; I don't recall.

Q. Apart from the actual initiation which, I assume, was the taking of oaths and things of that kind, did anybody do any talking except the people who took part in the initiation?

A. Yes sir, there was some talk.

Q. Well, what was the talk about? What did they say? Do [639] you remember anything about what took place there, except the initiation itself?

A. Not very much, no sir.

(Testimony of August Sannebeck.)

Q. Well, was any business transacted at that meeting that you can recollect?

A. They were to go out and see Mr. Huddleson, to see what could be done.

Q. Who was going out to see Mr. Huddleson?

A. The union.

Q. Well, who do you mean by the union, individually what men?

A. I don't know.

Q. Who said that they, somebody representing the union, was going to see Mr. Huddleson?

A. I don't know who he was that said it either.

Q. Well, how did that happen to come up for discussion? What brought that up and what was said about it?

A. Well, I don't know; everybody was talking down there.

Q. What were they talking about? Talking about the fact that on Monday night Mr. Huddleson had said he couldn't pay the wage that was demanded?

A. I don't know.

Q. Pardon me?

A. I don't know; I don't remember any of it.

Q. There was discussion there that night at the meeting, [640] wasn't there, about the probability of trouble there at the Santa Cruz? I mean you had heard Mr. Huddleson talk to the men on Monday night and he told you such things—by the way, what do you recall he said at that Monday night meeting?

A. Well, the only thing that I can recall, as I got

(Testimony of August Sannebeck.)

his talk, was that if we stayed with the union we were out, and if we dropped the union we could have our jobs.

Q. And he told you why he took that view was because he couldn't pay the 62½¢ an hour, in view of his competition?

A. Yes sir.

Q. He told you that if you insisted upon that rate of pay, he would have to get someone else to do the work?

A. Yes sir.

Q. And you believed that he meant that when you heard him say that?

A. Yes sir.

Q. You had this on your minds when you went to the meeting on Wednesday night?

A. Yes sir.

Q. Didn't you discuss with the others there what might happen in the future if you went through with this agreement or demand that had been sent to Mr. Huddleson?

A. They all discussed it.

Q. They all discussed this at the meeting Wednesday night? [641]

A. No, it was all discussed before then.

Q. When was it discussed?

A. I don't know—among ourselves.

Q. Well, what did you talk about, as to whether you would go to see Mr. Huddleson personally or whether you would go ahead with the union membership and the contract—what did you talk about?

(Testimony of August Sannebeck.)

A. I don't know. We just discussed everything.

Q. On Monday Mr. Huddleson asked you to think it over and talk to him about it, didn't he, after you had made up your minds?

A. Yes sir.

Q. Did you talk about whether you would do that or not, or what you would do?

A. No.

Q. Pardon me?

A. We did, yes.

Q. Did you reach any conclusion as a group, those of you who were working there, as to what you would do?

A. I don't get you.

Q. Well, after you talked it over, did you make up your minds as to what you were going to do? Did you decide upon any particular thing that you would do, whether you would send somebody to see Mr. Huddleson, or whether you would withdraw the demand for 62½¢ an hour, or what you would do? Did you [642] make any decision at all?

A. I wasn't in on all that.

Q. Were you in on any of it?

A. Not much, no.

Q. Well, now, this contract—you knew there was a contract that had been sent to Mr. Huddleson, didn't you?

A. Yes sir.

Q. When did you learn about that?

A. Oh, just from—I don't know when I first heard about it.

(Testimony of August Sannebeck.)

Q. Well, was it before you were initiated, or after you were initiated that you heard about it?

A. Before.

Q. And did you know what that contract was all about at that time?

A. I don't know that. I knew how much the wages were.

Q. What about the hours?

A. And hours, yes sir.

Q. What were the hours to be?

A. Eight hours a day.

Q. How many hours a week?

A. I don't know—I imagine 48 hours a week.

Q. Well, did you see a copy of that contract at any time?

A. No sir.

Q. Did anybody tell you in detail what it said, what it [463] was supposed to be about?

A. No sir.

Q. At any time?

A. No sir.

Q. Up to this time has anybody ever told you what this contract was about?

A. No.

Q. You were at the meeting on Wednesday night?

A. Yes.

Q. You didn't hear the contract read there?

A. I don't know if it was or not. I must have been in a fog.

Q. Did you do picket duty?

(Testimony of August Sannebeck.)

A. Yes sir.

Q. What were your duties as a picket, what were you supposed to do?

A. All I did was walk up and down East 14th Street.

Q. Just walk up and down?

A. Yes sir.

Q. Did you wave at any truck drivers as they went by and suggested they stop?

A. Yes sir.

Q. Did they stop?

A. Yes sir.

Q. What did you say to them after they stopped?

A. I just said there was a strike on here. [644]

Q. Yes. What did you ask them to do, anything at all?

A. No sir.

Q. What did they do, anything?

A. Turned around.

Q. All of them?

A. I don't know. I didn't stop many.

Q. All you stopped?

A. Most of them, yes.

Q. They all turned around and went back?

A. Yes sir.

Q. When you stopped them did you ask them whether or not they belonged to any union?

A. No.

Q. When you went back to the plant the morning after the initiation meeting did you try to see

(Testimony of August Sannebeck.)

any of these people connected with the management there to find about your job?

A. Well, I went back with all the fellows.

Q. You mean you didn't yourself try to talk to anybody, Toresen, Mr. Huddleson or anybody else?

A. No sir.

Q. When did you first meet Mr. Woods? Do you know who Woods is?

A. Yes sir.

Q. What is his position?

A. He is connected with the union. [645]

Q. When did you first meet him?

A. I don't know the day.

Q. Before the initiation meeting or afterward?

A. Afterward.

Mr. St. Sure: I think that is all.

Redirect Examination

Q. (By Mr. Edises) Now, when you joined the union what did you expect the union to do for you, Mr. Sannebeck?

A. Well, I expected it to get more money and better working hours.

Q. In other words, you expected the union would negotiate with the company and try to bring about these improved conditions?

A. Yes sir.

Q. And were you satisfied to let the representatives of the union handle these negotiations?

A. Yes sir.

Q. And when you showed up the following morning, Thursday morning, after the lockout, what

(Testimony of August Sannebeck.)

was your reason for not personally going to see any of the officials of the Santa Cruz Company?

A. Well, I knew I was out so I didn't think it would do much good.

Q. Well, you saw the picket line, and so on. Was it your understanding that the union was more or less handling [646] this matter?

A. Yes.

Q. In connection with this supposed bargaining with the company for better conditions, what were the items that you were chiefly concerned about?

A. Well, the items I was chiefly concerned about was going to work at 6 o'clock at night and work till noon the next day.

Q. In other words, you objected to long hours?

A. Long hours and measly pay.

Q. And those were the two chief items?

A. Yes sir.

Q. Other matters were more or less secondary?

A. They were secondary.

Q. And you understood that the union intended to ask for shorter hours and higher pay?

A. Yes.

Q. Were you particularly concerned about the specific amounts that they were going to demand in the way of pay as long as they were higher?

A. I didn't know much about that. I wanted to make a decent living anyway.

Q. Were you prepared to accept whatever they got for you?

A. Whatever the union got?

Q. Yes.

A. Yes.

(Testimony of August Sannebeck.)

Trial Examiner Traynor: Did you have any furthere questions, Mr. St. Sure?

Recross Examination

Q. (By Mr. St. Sure) You say you expected the union to try and represent you, or to represent you. By the way, when did you first go on the night shift? How long had you been working on the night shift?

A. I should say about a month before the strike.

Q. And did you ever talk with your foreman or anyone else, about the hours you were working?

A. Yes sir, we did.

Q. When did you talk to him about it?

A. Lots of times. We asked nearly every day to get somebody to take our place so we could go home.

Q. Didn't they work two shifts at that time?

A. No sir. We used to start at 6 o'clock and when we finished in the morning we went home, whether it was 8 o'clock, 9 o'clock or 10 o'clock. We worked straight through.

Q. You mentioned working until noon the next day.

A. We worked lots of times until 11:30 and 12 o'clock once in awhile. Most of the time it was 9 and 10 o'clock.

Q. And your work was what, in particular?

(Testimony of August Sannebeck.)

A. Particularly, I trucked and cased in on the labeling [648] machine, and trucked and stacked cases.

Q. You said you expected the union to represent you in getting better hours and wages. You heard Mr. Huddleson, on Monday night, say he couldn't pay the union demand of 62½¢ an hour. What did you expect the union to do for you after that? You say you believed Mr. Huddleson meant what he said. What did you understand the union would do for you after that?

A. I understood they would try to get it, that they would negotiate with him to see what they could get.

Q. Well, he had said flatly on Monday night, he wouldn't pay it. What did you think was going to happen next?

A. I don't know.

Q. Did it occur to you at all that one of the weapons of the union is a strike? Was that discussed at all as to whether you would do anything in your own behalf through the union to try to enforce these demands?

A. Not with me, no sir.

Q. You didn't have anything of that kind in mind?

A. Not with me.

Q. You thought the union would convince Mr. Huddleson by negotiations?

A. Yes sir.

(Testimony of August Sannebeck.)

Q. After the meeting on Wednesday night you say you went back to the plant Thursday. Was it your thought that the union would continue to try to negotiate with the management [649] for you?

A. Yes sir.

Q. What was your understanding of why the picket line was established?

A. I knew that he hadn't given it to us.

Q. What was the picket line supposed to accomplish? What was it supposed to do? Was it going to take part in these negotiations?

Mr. Edises: Just a minute, I believe that that question is not altogether clear. Apparently it ties up the previous situation with the picket line in such a way that the intervening situation is not made apparent to the witness. I suggest that the question be clarified.

Mr. St. Sure: I will withdraw it.

Q. (By Mr. St. Sure) After the initiation meeting, and after you had gone back to the plant and Stan Toresen told you your job was filled, what did you then understand the union was going to do?

A. They were going to get us what they were asking, and our jobs back.

Q. How did you understand they were going to do that?

A. I didn't understand.

Q. What did you understand your job was or the purpose of your being on the picket line?

A. To help the negotiations. [650]

(Testimony of August Sannebeck.)

Q. And how were you to help the negotiations? Or were you to help by trying to shut the plant down by stopping traffic from going in and out? Was that one of the things you were supposed to try to do?

A. We weren't supposed to try to do that.

Q. Well——

A. (Interrupting) We were going to help the union get what we wanted.

Q. I mean, how—what was it you were doing and how did you go about it?

A. I can't get what you mean on that question.

Q. Well, you said you were out there as pickets to try and get what you wanted. I want to know what you did that helped, and how you figured what you were doing helped, and what were you doing that would help out from your end of it?

A. (Pause)

Q. There were several hundred other people employed there, weren't there?

A. Yes sir.

Q. And at that time there were one thousand people employed in the plant. You can take my word for it. Did you feel it would help your cause if you would get them to stop work, too?

A. Yes sir.

Q. Did you try and get them to stop work and help you?

A. Not myself, no. [651]

Q. Well, was that part of the purpose of the picket line, as you understood it?

(Testimony of August Sannebeck.)

A. No, not for that.

Q. What was the purpose of the picket line? Was it to try and prevent produce from going in there and canned goods going out so the plant would have to shut down?

A. Yes sir.

Mr. St. Sure: I think that is all.

Further Redirect Examination

Q. (By Mr. Edises) Mr. Sannebeck, was there any talk of a strike or a walkout, or a picket line before you men were locked out?

A. Not that I can recall.

Q. After the picket line was established what did you form that picket line for, after you were locked out?

A. To keep the trucks out.

Q. Isn't it a fact that you were trying to get your jobs back?

A. Yes sir.

Q. Wasn't that what the picket line was formed for?

A. Yes sir.

Mr. St. Sure: That is your answer, Mr. Edises; the witness has answered himself.

Mr. Edises: I submit that the witness really knows what he wants to say, but it is simply—

[652]

Mr. St. Sure: (Interrupting) I don't know. It is obvious that you are suggesting the answers. I

(Testimony of August Sannebeck.)

think the answers the witness has given are his own answers, and those suggested by you are obviously suggested.

Q. (By Mr. Edises) You mentioned that the pickets were to help in negotiaitons after the picket line was established, after you were locked out. What kind of negotiations, what were you concerned about doing after the picket line was established?

A. Well, to get our jobs back; help the union get our jobs back. You got me kind of mixed up here.

Mr. Edises: It is obvious to me that the witness is mixed up.

Q. (By Mr. Edises) When you left the initiation meeting Wednesday night did you understand there was to be a picket line set up?

A. Not that night. As I understand it, I was supposed to go back and go to work.

Q. When you left the meeting that night did you have the idea you were not to receive your job back?

A. No sir; I did not.

Mr. Edises: That is all.

Mr. St. Sure: No other questions.

(Witness excused) [653]

Mr. Edises: Mr. Ellis.

FERN ELLIS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Trial Examiner Traynor: I think it may be a good time to take a short recess now.

(At this point a recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Traynor: You may proceed.

Mr. St. Sure: I have asked permission of Mr. Edises to withdraw the witness on the stand and permit Mr. Williams to go on now and enable him to get away as soon as possible.

Mr. Edises: Yes.

Trial Examiner Traynor: Is that agreeable to you, Mr. Edises?

Mr. Edises: All right.

R. F. WILLIAMS,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Mr. St. Sure: It is understood, for the purpose of the record, that Mr. Williams is here pursuant to the understanding that he will be subpoened.

Mr. Edises: Yes, I have a subpoena here for Mr. Williams. It is understood that Mr. Williams is here pursuant to subpoena issued by the Board.

[654]

(Testimony of R. F. Williams.)

Direct Examination

Q. (By Mr. Edises) What is your name?

A. R. F. Williams.

Q. And what is your position?

A. Assistant to the manager of the Santa Cruz Fruit Packing Company.

Q. How long have you been with the Santa Cruz Fruit Packing Company?

A. About thirty months.

Q. What?

A. About thirty months—a little over two years.

Q. And had you been in the canning industry prior to that?

A. Yes, I have been in the canning industry for sixteen years.

Q. Can you give us a brief account of your experience in the canning industry?

Mr. St. Sure: You mean the positions he has held?

Q. (By Mr. Edises) Yes, such as yould qualify you for the job you now hold.

A. Yes. Well, I was assistant general manager of the California Cooperative Canneries; then sales manager for them for about ten or twelve years.

Later I was general manager of the Tri-Valley Packing Association.

Mr. Edises: Can we stipulate that Mr. Williams is [655] an expert in canning, the canning business?

(Testimony of R. F. Williams.)

Mr. St. Sure: As a result of his experience, and by reason of his background and the positions that he has held, he is an expert in the administrative business of canneries, as well as salemanship, and I don't know what else.

What have you in mind, Mr. Edises?

Mr. Edises: I have a few general questions about the canning industry in California that I would like to ask.

Mr. St. Sure: Suppose you put the questions. If I object to lack of foundation, then we can qualify him.

Q. (By Mr. Edises) Will you describe your duties and responsibilties as assistant to the manager at the Santa Cruz plant?

A. Well, principally my duties are in connection with the control of the sales and the salemen, when Mr. Huddleson is absent; and when he is at the office, of course, assisting him in the details of his own work.

Q. And do you have anything to do with the receiving end, and the processing end, and the warehouse end, and so on?

A. Only in a general sense of the word. We have a general superintendent who handles that work.

Q. And is your position above that of the general superintendent?

A. Yes sir.

(Testimony of R. F. Williams.)

Q. How long has Santa Cruz Fruit Packing Company been [656] in existence as a California corporation?

Mr. St. Sure: I think that is admitted in the pleadings.

Q. (By Mr. Edises) I asked how long.

A. Well, I think it has probably been under two corporate names.

Mr. St. Sure: The complaint alleges that the corporation has been in existence since February 6, 1914, and my recollection is that we admitted that in the answer. If it isn't admitted, we now admit it, for whatever the purpose may be.

Q. (By Mr. Edises) Referring specifically to the Oakland plant of the Santa Cruz Fruit Packing Company, how long has that been in existence?

A. As a property of the Santa Cruz Fruit Packing Company, since 1932, the year they came up here.

Q. And what in general are the operations that are carried on at the Santa Cruz Fruit Packing Company's Oakland plant?

A. Do you mean the specific products that are packed in it?

Q. First what is the nature of the work which is done there?

A. Canning of fruits and vegetables.

Q. And what are some of the major crops? Let me put it this way: What is the most important pack?

Mr. St. Sure: Numerically? [657]

(Testimony of R. F. Williams.)

Q. (By Mr. Edises) Quantitatively.

A. Tomatoes and tomato products.

Q. And after that?

A. Peaches.

Q. And then the next most important?

A. Spinach would be next, I presume, in order, and asparagus.

Q. And still in a quantitative sense, what would be next most important?

A. Pork and beans are packed. The volume of that would probably be ahead of some of those other items.

Q. How about pears?

A. No, we don't pack pears.

Q. No pears?

A. No.

Q. What other packs do you handle at the Santa Cruz Fruit Packing Company plant?

A. We pack—well, we have packed artichokes?

Q. Artichokes?

A. Yes. We pack red kidney beans and hominy. Those are practically all that we pack there.

Q. Those are the principal packs?

A. Yes, they are.

Q. I understand that the Stokely place is connected with the Santa Cruz plant in some manner. Can you tell us what interest, if any, Stokely has in the Santa Cruz Fruit Packing [658] Company?

A. Well, it is a contractual interest. I haven't the knowledge of the details of the contract existing between the two companies.

(Testimony of R. F. Williams.)

Q. Do you know what the capital set-up of the Santa Cruz Fruit Packing Company is, the amount of the capital stock and so on?

Mr. St. Sure: In so far as matters that would be of record in relation to the contractual or other connection between Stokely and Santa Cruz, or the capital set-up of Santa Cruz, we must insist that that information, if it is material, be developed from the records themselves and not from hearsay testimony of Mr. Williams or any other person.

Q. (By Mr. Edises) Would Mr. Gaddis, the secretary, be in position to give us first-hand information of his own knowledge of the corporate set-up of Santa Cruz and its connection with Stokely, or do you yourself have that information?

A. No, I do not. I think Mr. Huddleson would be the party that could give it to you.

Q. Do you know that on November 23, 1934, the Santa Cruz Fruit Packing Company increased its capital stock from $100,000 to $110,000, divided into 1,100 shares of the par value of $100 per share, 550 shares preferred, and 550 common, and that one-half of the entire capital stock was [659] transferred to Stokely?

A. No, I don't know that of my own knowledge.

Q. Do you know about what quantity of canned goods is put up by Santa Cruz for Stokely during the course of a year, or specifically, during 1935?

A. Do I know what quantity of canned goods were put up?

(Testimony of R. F. Williams.)

Q. Yes, about how much was put up by Santa Cruz for Stokely?

A. I would say somewhere around between 40 per cent and 50 per cent of the quantity of our pack was put up for them.

Q. What?

A. Somewhere around 40 per cent or 50 per cent of the pack.

Q. Of the entire Santa Cruz output?

A. Yes.

Q. Was put up for Stockely?

A. Yes sir.

Q. And what were the chief products?

A. Tomatoes and tomato products.

Q. Anything else?

A. Yes, pork and beans represent quite an item, too.

Q. And anything else?

A. Hominy and red kidney beans.

Q. Do you know about what percentage of the pack which was put up for Stokely was shipped out of the State of California to the Stokely distributing agencies in other states of the [660] Union?

A. I would say somewhere between five per cent and ten per cent.

Q. And the balance of the stuff put up for Stokely——

A. (Interrupting) Was used locally in the State of California.

Q. Used locally in the state?

A. Yes.

(Testimony of R. F. Williams.)

Q. I take it that employment at the Santa Cruz plant is seasonal in nature, that is, there are heavy seasons and light seasons, is that true?

A. That is true.

Q. And when is the peak season as far as employment is concerned?

A. Usually during the peach season; that would be midsummer.

Q. And at that time about how many employes are employed in the Santa Cruz plant?

A. Well, I would say from 1,200 to 1,500 individuals.

Q. That includes the Stokely warehouse?

A. Yes. Well, that wouldn't make much difference; the number of employes wouldn't make much difference as between the two.

Q. And a certain faction of the employes at the Santa Cruz plant remain there during the entire year, is that [661] correct?

A. Yes, that is right.

Q. Now, which types of labor are kept for the entire year?

A. Well, machinists, superintendents, specialist in processing, warehouse employes; and of course all clerical and office help, and then whatever is necessary to the processing of the non-seasonal products, which is ordinary labor for that purpose.

Q. The warehouse employes are not seasonal; they are retained the year around. Is that correct?

A. To a certain extent. There are peak periods in warehousing as well as in processing.

(Testimony of R. F. Williams.)

Q. Can you estimate about what variation there is in warehouse employment during the off season and the busy season?

A. Well, as a rule they have tried to handle it so as to spread the employment and keep as many of the men on as possible, especially of the older men. In that way it is usually run more on a basis of hours, rather than the numerical strength of employes. It varies. The extra help brought in may run 15 or 20 per cent, or 25 per cent higher at times.

Q. There is a spur line, is there not, running from the main line to the Santa Cruz plant?

A. Yes sir. [662]

Q. What railroad company is that?

A. Southern Pacific.

Q. Southern Pacific?

A. Yes.

Q. Is the spur line the property of the Santa Cruz Company or the property of the Southern Pacific?

A. I am not sure. I believe that the cost of installing spur tracks in the state is initially expended by the company and I think revert to the railroad company. I think it is their property. That can be established and given to you at a later date. I think that is the way it is.

As a rule, the company pays for it and the property reverts to the railroad company.

Q. The track was installed by the railroad company?

(Testimony of R. F. Williams.)

A. Yes, by the railroad company, and paid for by the company.

Q. And in the event that the company eventually ceases operation, and ceases to use it, it reverts to the railroad company?

A. Yes, there is a reversion; that is correct.

Q. Mr. St. Sure has submitted some figures in regard to the quantities and percentages of the Santa Cruz pack which is destined beyond the State of California and within the State, and——

Mr. St. Sure: (Interrupting) May I correct that— [663] destined beyond. We said those that were billed to, or sold to customers who had their principal offices outside the State. That does not mean necessarily destined outside the State.

At this time, and in this connection, I would like to state, in that figure of 69.68, which I submitted, I understand from my discussion with Mr. Williams this morning, that this 40 or 50 per cent that he referred to as being the pack for Stokely, is included in that figure; and he says that only five or ten per cent of that 40 or 50 per cent actually gets out of the State at all.

And so I take it, if my calculations are correct, that of that 69.68 per cent, which is sold to purchasers who have their principal offices outside the State, some 60 per cent of that doesn't leave the State at all. It is actually consumed here, even though it may be billed to persons outside the State.

Am I correct in that, Mr. Williams?

The Witness: That is correct.

(Testimony of R. F. Williams.)

Mr. St. Sure: Pardon the interruption. I thought that was a good time to mention that.

Q. (By Mr. Edises) According to the figures submitted by Mr. St. Sure, the 1935 total pack and carry-over at the Santa Cruz plant was 1,699,270 cases.

Mr. St. Sure: Do you want me to give you those [664] figures, or do you have them?

The Witness: I haven't got them. I think I can be close enough so that I can probably answer the question generally, for him.

May I ask for the figures if I need them?

Mr. St. Sure: Yes.

The Witness: I think I can get close enough, unless there is something to—did you want me to say that that was correct?

Q. (By Mr. Edises) Is that correct?

A. Substantially correct, yes.

Q. Now, can you state about what percentage of that entire pack consisted of peaches?

A. Of that figure, which includes both, would be somewhere around, just under two per cent, I would say.

Q. Under two per cent?

A. No, under 20 per cent, I should say.

Q. Around 20 per cent?

A. Yes, that is right.

Q. And about what percentage would the tomatoes and tomato products be?

A. About between 40 and 50 per cent. May I correct that peach figure? I think that probably it

(Testimony of R. F. Williams.)

is about 15 per cent; probably a little lower than 15 per cent.

Q. About 15 per cent? [665]

A. Yes, of the total.

Q. And about what percentage would be spinach?

A. About ten per cent.

Q. Two per cent?

A. Ten per cent.

Q. And asparagus?

A. Possibly two per cent.

Q. Is the one spur track serving both the Stokely and Santa Cruz warehouses?

A. No.

Q. Stokely has a separate spur track?

A. Stokely is located on an industry track. I think it belongs to—I think it is a real estate group and it probably serves industries, several industries on the same track.

Q. I see. Can you estimate about what proportion of the canned goods which enter the Stokely warehouse are then placed either upon trucks or box cars, or other means of transportation and then shipped outside the State of California?

A. As I told you a few minutes ago, my estimate would be between five per cent and ten per cent, possibly not of the total pack; some of which might be loaded directly, or loaded from the docks where some storage—where they have some storage. [666]

(Testimony of R. F. Williams.)

Q. Now, then, exclusive of Stokely, according to the figures we have from Mr. St. Sure, 9.02 per cent of the total pack and carry over is sold to purchasers outside of the United States. I presume that means chiefly the British Isles, does it not?

A. Yes, by far the greatest volume of business goes there.

Q. Can you state about what percentage of your entire foreign shipments goes to the British Isles?

A. Well, my guess would be that it would run possibly ninety to ninety-five per cent of that 9 per cent.

Q. Ninety to ninety-five per cent?

A. Yes sir.

Q. Can you state approximately how many cars per day, on an average, are loaded at the Santa Cruz warehouse during the busy season, which, I take it, is from about June to September or October, is that correct?

A. Well, yes; probably the shipping season would be a little bit later. It would probably extend from August, say the latter part of July until the latter part of September or the first part of October.

Q. Can you estimate an average of about how many cars a day are loaded?

A. Do you mean by that you want rail transportation only?

Q. First with rail transportation, yes—one further qualification. I take it that some of the cars that are loaded go directly overland, is that right?

[667]

(Testimony of R. F. Williams.)

A. That is right.

Q. And other simply go to the docks from where they are——

A. (Interrupting) The reason I asked you to distinguish which you meant was because of the fact that most of the dock shipments go on trucks; they are not loaded on cars, you see, so that the proportion that travels by rail is very small.

Q. I see.

A. It would be rather difficult to give you an estimate of how many cars are loaded, rail cars are loaded out of there because only about 20 per cent of the total shipments overland go on rail.

Q. You say that about 20 per cent of your total shipments go overland by rail?

A. I think that would operate for the industry as a whole, and I take it we must be——

Mr. St. Sure: (Interrupting) Just a moment. It wasn't 20 per cent of the shipments did go. Rather, of the merchandise that does go outside the state, about 20 per cent of that which is purchased by shippers and which goes to them outside the state goes by rail.

The Witness: Yes, 20 per cent or less. It is in that neighborhood and that holds true for the industry.

Q. (By Mr. Edises) You are referring to buyers chiefly on the east coast, I take it?

A. No, none of that travels by rail. [668]

Q. Well, now——

A. (Interrupting) It is only inland where the rail rates from the port are higher than the

(Testimony of R. F. Williams.)

through rates that exist from here by rail to where these shipments go.

Q. To what points do you ship chiefly by rail?

A. Well, to mention major markets, such as Chicago, Kansas City, St. Louis. Of course, the Twin Cities.

Q. Any others?

A. Well, you might say all of northern Missouri; the Rocky Mountain territory.

Q. Can you give an estimate, in terms of quantities, whether by cases or cans, or tonnage, or any other way, of about how much of your yearly pack of all products is shipped to the inland points that you have mentioned by rail from the Santa Cruz plant?

A. Only I would say again it was substantially less than 20 per cent of the total shipments—wait! You say of all of our sales, or all of our pack?

Q. Of all of your pack that is shipped out.

A. It is less than that because I would exclude—because that doesn't come in. The separation, as between rail and water shipments these days, in the industry is somewhere around between 15 and 20 per cent by all rail movement and the remainder by water, or water and rail. [669]

Q. And these rail shipments, I take it, all go beyond the borders of the State of California?

A. No, that wouldn't hold true because they do ship some intrastate shipments.

Q. About what per cent would you say was intrastate?

(Testimony of R. F. Williams.)

A. It would be very small; possibly two or three per cent.

Q. Of the approximate 20 per cent?

A. Of the 20 per cent.

Q. And the balance goes beyond the borders of the State of California?

A. Goes into those territories that I mentioned heretofore, yes.

Q. And I take it then that as far as domestic purchasers are concerned, your chief method of shipment is by water?

A. By water.

Q. Based on the fact that water rates are usually lower?

A. That is right.

Q. Dealing now with the domestic shipments of your products by water, about what percentage of your total pack, during 1935, for example, was shipped by water to the various points in the United States outside the State of California?

A. I would like to give you the actual figures on that. I would be glad to submit them; the reason for it being that there are quite a lot of merchandise that is sold which isn't [670] shipped, you see, and I haven't got that separation clear in my mind.

Q. You say there is a certain portion which is sold but not shipped?

A. That is correct.

Q. Can you enlarge upon that and tell us what you mean?

(Testimony of R. F. Williams.)

A. They are under contract for movement at a later period.

Q. I see. And is that period ordinarily during the given year, or is there a carry over through the winter?

A. It carries over through the winter. As a rule the end of the term is around March 1st. There are a number of the contracts which do end December 31st. For instance, we bill against warehouse receipts. We sell the eastern buyer, you see, with the definite shipping date for, as our contract specifies, we have a right to bill them against a local warehouse receipt, which we do, and the merchandise is theirs and they ship it; from that point on we just act as an agent in shipping it for them.

Q. You speak of selling goods but not shipping the goods. Where are they stored?

A. Stored in our warehouse.

Q. In your own warehouse?

A. Yes.

Q. And your own men, your own warehouse employes do the actual loading into trucks or cars when the shipping date [671] arrives, is that correct?

A. That is true.

Q. Even though, as you say, the merchandise has already been sold, is that true?

A. That is correct.

Q. So that, I take it, there is a pretty constant stream during the entire year, and particularly during the period that you have mentioned, July to

(Testimony of R. F. Williams.)

September, of loading and shipping at the Santa Cruz plant, is that correct?

A. That is correct.

Q. Regardless of the form of the transaction, or the contract with your buyers, every bit of the goods which is canned at the Santa Cruz plant is handled by your own warehousemen, is that not true?

A. That is canned at our own plant?

Q. Put up at your own plant, it is handled by your warehousemen?

A. Yes.

Q. And your warehousemen do all of the loading of the canned goods into whatever vehicle of transportation has been chosen for the purpose, is that correct?

A. If you mean the immediate carrier, yes.

Q. Pardon me?

A. If you mean the immediate carrier, the immediate form [672] of transportation, yes. For instance, we don't load steamships. We have nothing to do with that. We load it primarily for transportation to the docks.

Q. Your men put it into the trucks, is that correct?

A. Yes, correct.

Q. And the trucks carry it to the dock?

A. Right.

Q. And then your men haven't anything to do with the loading into the ships?

A. No.

Q. However, that is a pretty continuous operation, is it not?

(Testimony of R. F. Williams.)

Mr. St. Sure: That is calling for a conclusion.

Mr. Edises: Let him get at it any way he wants. Do you object to my asking the question in that form?

Mr. St. Sure: It seems to me it is vague—"it is a continuous operation." I think the operation is one thoroughly well known. The trucks take it to the dock and apparently it is handled by one group of car unloaders, and a group of warehousemen and a group of stevedores, under the present set-up. It may take a week or a day.

Mr. Edises: That is the point I am interested in bringing out.

Q. (By Mr. Edises) What period of time elapses ordinarily from the time that the goods are loaded into the trucks until [673] the time that they are loaded on to the steamships?

A. The customary free storage time on the dock is ten days and we try to get it to the dock as far ahead of the movement of the steamer as possible, of course; and it varies sometimes.

Q. But ordinarily not over ten days, is that correct?

A. It is ten days; ten days is the period of free storage.

Q. And as a general thing it is usually less than ten days from the time that it is loaded into the trucks until the time that it is loaded on to the steamship?

A. Well, I would say that it would average less than ten days; that, depending, of course, on the regularity of schedules of the steamship companies.

(Testimony of R. F. Williams.)

Q. Average about how many days?

A. I would only be guessing to tell you that. I think that probably somewhere around seven or eight days.

Q. Can you tell us approximately what percentage of your total pack in 1935 was shipped by water, either to foreign ports or to domestic points outside the State of California?

A. I would like to refer to the figures, if I may. You have them there. (Referring to data) I would say that somewhere around twenty-five per cent. You notice the reason I wanted to refer to these figures was you asked for the shipment—

Q. (Interrupting) What is that?

A. You asked for the shipment of goods. These figures that [674] we have here (Indicating) are sales and not movement.

Q. Oh, yes.

A. And I am trying to figure it back from these figures to the movement.

Q. Yes.

A. And I would say that it is somewhere around twenty-five per cent that moved by water domestically and export combined.

Q. About what proportion of the total pack of new canned goods, that is the canned goods which are first put up during the season, are moved during that season and about what percentage is carried over?

A. The carry over is relatively small. For instance, when we give you the figure of about 1,700,-

(Testimony of R. F. Williams.)

000 cases there is probably only 100,000 cases of it not packed during the current year.

Q. And all the rest—

A. (Interrupting) All the rest is current year's production.

Q. And is moved out of the plant, is that correct?

A. Well, no; I wouldn't say that all of it is moved when this figure is given you, understand; what I mean, when I say movement, this March 1st, which is the tax period—the first Monday in March in California is the tax period—and that is the reason for setting the terminal dates on these contracts and the reason these goods don't move is that the [675] buyers take as long as they can to accept the delivery over the period. We spread it. The terminal date being March 1st, the majority of them move out. All the sales prior to that time do move out, and naturally selling during the year goes on to liquidate for the remainder of your former year's crop.

Q. I show you a document which is headed, "British Isles Canned Food Contract Buyer's Copy," and ask can you identify that?

A. (Examining document) Yes, it is a customary canned food contract covering sales made to the United Kingdom of Great Britain by the canners of California.

Q. And who fills out this contract, who prepares it?

A. It is prepared by the seller.

Q. By the seller. Will you relate the process whereby a sale is made to a purchaser in the Brit-

(Testimony of R. F. Williams.)

ish Isles, describing the function of the broker, and so on?

A. Yes. You want this specifically relating to our case or the general industry method?

Q. Relating specifically to your industry, to your own company, I mean.

A. Yes. That is what I mean. Well, the procedure is, first, you appoint a broker in one of the markets, probably in London. That broker is acting on a commission basis. We, ourselves, have no contracts. We don't make a brokerage contract with any broker. In other words, we have a right to accept business [676] from the U. K., or any market from a broker that we see fit on the customary terms of payment, that is, a commission of 2½ per cent.

These brokers, in these outlying markets cable in an offer or order. Then the procedure is for ourselves to decline or confirm the order as we see fit. If it is confirmed we prepare our contract covering the sale.

Q. And you designate the means of shipment, I take it?

A. You mean by that the routing?

Q. The routing, yes.

A. No, the buyers, as a rule, do that; the buyers, as a rule have some preference as to shipment and they designate it.

Q. But how about the specific vessel that it is shipped on?

A. That is what I mean.

Q. They designate the vessel?

(Testimony of R. F. Williams.)

A. As a rule, the buyers through solicitation do it. We have the right, but they do it.

Q. I believe that the contract provides that you have the right?

A. That is correct, yes.

Q. And your permitting the buyer to designate the route is something in the nature of a courtesy, is that true?

A. Well, it is more in the nature of a custom of the trade.

Q. Was there any particular reason that you know of for [677] including in this type of contract, which I understand is used pretty generally by the trade, that the routing is to be designated by the shipper?

A. Yes, it is for the purpose—for instance, if there is any difficulty in shipping by the line designated by the buyer, we have open to us other lines of transportation.

Q. Now, this British Isles Canned Food Contract, that I have previously referred to, is, I take it, what is known as a c. i. f. contract, is that right?

A. Yes, that is a c. i. f. contract.

Q. In other words, the cost, insurance and freight, are included in the price which you quote to the buyer.

A. That is right.

Q. And dealing with the British Isles again, how is the bill of lading made out? Can you answer that question or do you want me to be more specific?

A. Yes; I wish you would.

(Testimony of R. F. Williams.)

Q. For example, is it made out to yourselves or order, or is it made out to the seller, that is—

A. (Interrupting) Yes.

Q. And specifically, can you relate just how it is made out? You know that certain of these, or some of them are made out to the seller and the others to the seller or order. That is your practice, is it not?

A. Yes. I might clarify this by saying that in some [678] instances the buyers have agents here who take out their own bills of lading and documents on shipments. In that event, we, of course, don't handle any shipping documents whatsoever, but in the case of shipping direct to a buyer, we would ship it our order to notify the consignee.

Q. What is that?

A. Ship to our order and notify the consignee.

Q. And, I take it, that that is the usual practice in shipping to the British Isles, is that true?

A. Well——

Q. (Interrupting) In other words, about what proportion of your shipments to the British Isles are handled in that fashion and what proportion by this other method that you have just indicated?

A. I would say about 50 per cent.

Q. 50 per cent each way?

A. Yes sir.

Mr. Edises: Have you a copy of the——

Mr. St. Sure (Interrupting) Here is the form of order bill of lading (indicating).

The Witness: That is the domestic steamship bill of lading.

(Testimony of R. F. Williams.)

Mr. St. Sure: Yes, American-Hawaiian.

Q. (By Mr. Edises) This is the domestic form. Have you [679] one for foreign shipment?

A. I don't think we have one of the foreign line bills of lading. We can get you one.

Q. You would state that 50 per cent of your shipments to the British Isles are made out in the form of a bill of lading to seller or order, to yourselves or order, and about 50 per cent in the other fashion that you have indicated?

A. I think that would be substantially the proportion that would be handled in that manner.

Q. Isn't it a fact that the almost universal practice in shipping to the British Isles, among canners in the State of California, is to make out the bill to the seller or order?

A. Yes, I think that most canners in the industry handle it in that way. You see all of these documents are endorsed and sold locally. Most of the contracts that are issued in California, especially domestic contracts, more than the export contracts, are sold f. o. b. the point of embarcation; that is the docks here in San Francisco or the Oakland side of the Bay, as the case may be.

Q. In other words, the usual practice for foreign shipments is to ship c. i. f. bill of lading made out to the seller or order?

A. Well, yes, if that is a c. i. f. sale. Of course, there is quite a proportion of these sales that are made [680] f. o. b. I am speaking now of the industry.

673

(Testimony of R. F. Williams.)

Q. Now, of your own sales to the British Isles, because I imagine that that is the major point of destination, what proportion of your sales contracts are c. i. f., and about what proportion f. o. b.?

Mr. St. Sure: We have that figure in the record, 7.02 per cent c. i. f., and two per cent f. o. b., those two figures making up the 9.02 per cent export or sales to purchasers outside the United States.

Q. (By Mr. Edises) Does the form—

A. (Interrupting) May I clarify that a little? We may make a c. i. f. sale, but it may be handled, as I said before, that the shipping documents are handled by an agent of the buyer on this side, and in that c. i. f. proportion is a substantial volume of that character of sales.

Q. Regardless of the form of the contract, does that ordinarily affect the way the bill is made out, c. i. f. or f. o. b.?

A. No, it does not.

Trial Examiner Traynor: We will recess now until 2 o'clock.

Mr. St. Sure: How much longer will you have Mr. Williams on the stand? He has a meeting in San Francisco and would like to be there by 1:30.

Mr. Edises: Off the record.

Trial Examiner Traynor: Off the record. [681]

(Discussion off the record)

Q. (By Mr. Edises) Is the bill ever made out to the buyer in your practice, the bill of lading?

A. Yes. It is infrequent, but it is done.

(Testimony of R. F. Williams.)

Q. And on those occasions, is the bill retained by the seller until either payment has been made or these has been the necessary adjustment at the other end?

A. No, not necessarily. There are some cases where the concern is shipped on practically open account and it is in those cases.

Q. It is infrequent, is that correct?

A. Yes, I would say that is infrequent. We are referring now, again to export or domestic, because that is a little different than the practice between the two.

Mr. St. Sure: Which are you referring to?

The Witness: I am asking which?

Mr. St. Sure: He asked whether you were referring to export or domestic.

Mr. Edises: I am still speaking of export.

The Witness: That is very rare.

Q. (By Mr. Edises) Now, is the draft made out at the time the contract is made out?

A. Yes.

Q. What happens to that draft? By the way, on whom is it drawn? [682]

A. It is drawn on the buyer.

Q. And what is done with the draft?

A. It is customarily sold locally.

Q. Sold locally?

A. Yes sir.

Mr. Edises: You have seen these, Mr. St. Sure?

(Referring to British Isles Canned Food Form of Contract and form of Draft.)

(Testimony of R. F. Williams.)

Mr. St. Sure: Yes. I suggest, in offering these that we are not waiving any of our former objections as to materiality, jurisdiction, and so on, but to assist in getting the picture in the record.

Mr. Edises: Yes. I offer in evidence, as Board's Exhibit No. 6, British Isles Canned Food Contract.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 6.

(The form of contract referred to was received in evidence and marked Board's Exhibit No. 6, Witness Williams.)

Mr. Edises: As Board's Exhibit No. 7, I offer form of draft with the company's bill of lading, and made out at the time the contract is filled out.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 7.

(The form of draft referred to was received in evidence and marked Board's Exhibit No. 7, Witness Williams.) [683]

Q. (By Mr. Edises) Can you produce for us, Mr. Williams, a specimen bill such as is used in shipments to foreign points?

A. I would be very glad to.

Mr. Edises: And will you, Mr. Reporter, reserve an exhibit number for that?

The Reporter: That will be Board's Exhibit No. 8.

(The specimen bill referred to, such as used in the shipment of merchandise to foreign points, will, when submitted by the Respondent, be marked as Government's Exhibit No. 8, Witness Williams.)

(Testimony of R. F. Williams.)

Q. (By Mr. Edises) Now, about the domestic shipments. I understand that most of those contracts are f. o. b. Oakland, is that correct?

A. (No answer)

Mr. Edises: I offer in exidence the document which was formerly marked Respondent's Exhibit No. 2 for identification, and request that it be made a part of Board's Exhibit No. 6.

Trial Examiner Traynor: Admitted in evidence as part of Board's Exhibit No. 6.

Mr. St. Sure: That is with the understanding that it is offered and received subject to the objections we have previously made and without waiving any of those objections?

Trial Examiner Traynor: Yes.

(The document referred to, Respondent's Exhibit No. 2 for identification only, was received in evidence and made a part of Board's Exhibit No. 6. Witness Williams.) [684]

The Witness: May I have that last question read back to me?

Q. (By Mr. Edises) How are the domestic shipments handled, that is, what form does that contract take?

A. It takes the usual California canned foods contract.

Q. And is that f. o. b. Pacific Coast?

A. F. o. b. Pacific Coast.

Q. And specifically f. o. b. Oakland in your case?

A. F. o. b. Oakland, or Bay points.

Q. Oakland or Bay points?

(Testimony of R. F. Williams.)

A. Yes sir.

Q. Is this form of contract (indicating) used in domestic sales?

A. (Examining form of contract) Yes, it is.

Mr. Edises: I offer this in evidence as Board's Exhibit No. 9.

Mr. St. Sure: Subject to the same objections.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 9.

(The domestic sale form of contract referred to was received in evidence and marked Board's Exhibit No. 9, Witness Williams.)

Q. (By Mr. Edises) How about the bill of lading in the domestic shipments?

A. The bills of lading in the domestic shipments are customarily made to the order of the shipper, notify the—— [685]

Q. To the order of the shipper?

A. Yes.

Q. Notifying the consignee?

A. Yes.

Q. Now, I show you a document marked "Uniform Straight Bill of Lading," and another marked "Uniform Order Bill of Lading," and can you tell us the different circumstances under which each of those is used?

A. Well, the uniform straight bill of lading is used in cases where you do not ship the merchandise under negotiable documents.

Q. And what about—about what proportion of your domestic shipments are used on the straight form?

(Testimony of R. F. Williams.)

A. I am afraid I couldn't give you a very close figure on that.

Q. Well, you ordinarily use the order form, don't you?

A. Yes. I would say that there is more use of the order form than of the straight bill of lading.

Mr. Edises: I offer these in evidence.

Q. (By Mr. Edises) These are the only forms that you use, are they not?

A. I think that is a uniform bill of lading. It would be changed by the name of the railroad company. One railroad company uses the same as the others, and I think they are standard forms. [686]

Q. This (indicating) is the Southern Pacific Company's form, and you do all of your overland shipping through the Southern Pacific, do you?

A. No, we may ship on other lines.

Q. What line has the major part of your domestic business?

A. The Southern Pacific would have probably the major portion.

Mr. Edises: I offer these two forms in evidence as Board's Exhibit No. 10.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 10.

(The uniform straight bill of lading referred to, and the uniform order bill of lading referred to, were received in evidence and marked Government's Exhibit No. 10, Witness Williams.)

Q. (By Mr. Edises) I show you two other documents, marked "Order Bill of Lading," and

(Testimony of R. F. Williams.)

"Straight Bill of Lading," and I take it that these are forms used in shipping by water; is that correct?

A. (Examining forms) That is correct.

Q. What steamship company handles the major part of your domestic shipments?

A. That is divided. I would say it is very difficult to tell without an analysis, because the principal direction of the routing of all of this domestic business is in the hands of the buyers. We don't control but very little of it. [687]

Mr. Edises: I offer in evidence these two forms as Board's Exhibit No. 11.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 11.

(The order bill of lading and the straight bill of lading referred to were received in evidence and marked Board's Exhibit No. 11, Witness Williams.

Q. (By Mr. Edises) Do you ever employ the practice of sending a draft direct to the buyer along with the other documents of title? That is, instead of selling it locally, just sending the draft directly to the buyer, or to the bank, or clearing house in the buyer's city?

A. All these drafts, of which you have a copy there, usually accompany an endorsed bill of lading and they are presented by the collecting bank for collection from the consignee or buyer.

Q. In other words, the draft always accompanies the bill of lading; is that correct?

A. Yes, when there is one drawn.

(Testimony of R. F. Williams.)

Q. And that applies both to domestic and foreign shipments?

A. That is right.

Q. And that is your customary practice in all of your shipments, I take it?

A. Well, I want to clarify the fact that in the majority of instances, at practically all instances on the foreign [688] drafts, that they are sold locally. We don't send them through for collection.

Q. And how about the domestic?

A. The domestic drafts are collected through the banks.

Q. So in each case the draft accompanies the bill?

A. That is right.

Q. How about the insurance contract? How is that made out?

A. The insurance contracts, of course, only cover water shipments. They are made out to the Santa Cruz Fruit Packing Company, where we insure them. We probably insure about half, or a little less, of the movement of our goods. The most of them, or half, are insured by the buyers themselves.

Q. And you yourselves insure the shipment in every case where it is sold c. i. f.?

A. Well, yes; we do if we handle the document.

Q. That of course follows.

A. You understand that these cases where the people handle the document locally, they do the insuring themselves and we simply make them an allowance for it.

(Testimony of R. F. Williams.)

Q. Now, of the various products which you handle, I take it that in certain cases, more than in other other cases, are shipped either to foreign countries or out of the state of California? [689]

That question isn't very clearly worded. Let me put it this way. Certain packs are almost entirely export packs, is that not correct?

A. No, that isn't correct.

Q. Well, take peaches, for instances. Isn't it true that of your annual pack of peaches almost the entirety of it is shipped either to foreign countries or outside the state of California?

A. The peach pack?

Q. Yes.

A. Being shipped entirely to foreign countries—

Q. (Interrupting) Either to foreign countries or outside the State of California, to other points in the United States?

A. No, that isn't correct. The percentage of fruit shipped within the state would average just about the same as the vegetable shipments within the state.

Q. Well, don't you ship more of certain products outside the State of California than others?

A. I think I can help you. If you are driving at pears, for instance, it would be an export item. The volume of pears shipped to England, for instance, is greater proportionately than any other fruit.

Peaches, the proportion shipped export is very small. Of course the consumption of peaches out-

(Testimony of R. F. Williams.)

side the state of California is greater than it is in state of California [690] because the consuming public is located outside of California.

Q. Of your various packs, which is shipped most largely outside of the state of California? In other words, what is your biggest market outside of the state of California?

A. In this list that I gave you—we had better add that to it. Many apricots are shipped in quite a large volume outside the state, as well as peaches and pears.

The fruits are shipped in greater volume to the Eastern markets than the vegetables are from this territory, if that is what you mean.

Q. So that of the figures given by Mr. St. Sure and yourself, for example the figure of 9.02 per cent sold to purchasers outside of the United States, that is a figure which applies to your total pack and would probably be considerably larger, would it not, as applied to peaches, apricots and pears?

A. That is correct.

Q. Now can you estimate approximately what percentage of your peach pack is shipped either to foreign countries or to points in the United States outside the State of California?

Mr. St. Sure: Just so we won't be misunderstood in this thing—we have been using the word "shipped" and the word "sold" rather loosely, and I assume we are all talking about the same thing, but I wish we would keep in mind, for [691] the purpose of the record, the distinction which Mr.

(Testimony of R. F. Williams.)

Williams has made: that these figures that we gave were figures of goods sold to purchasers outside the state, and the lesser proportion of those goods actually sold actually moved, following the sale. I don't want to be objecting to the use of the word "shipped," but if we can understand that by "shipped" we mean that the documents themselves would indicate to whom the shipment went and who was responsible for the shipment, we can proceed with the assumption that we can use the expression to mean movement, rather than trying to say who was the owner and who was responsible for the shipment?

Mr. Edises: Well, I have no objection to using the word "movement" as far as that is concerned. I am more interested in the physical act of the movement than in the title.

Mr. St. Sure: I don't want to be in the position of assuming certain legal conclusions, drawing legal conclusions, from the use of the word. I understand we are talking about the physical movement, regardless of where title lies, and that we not have that misunderstanding in the record.

Mr. Edises: I am willing to use the word "movement."

Will you read the last question, Mr. Reporter?

(The question referred to was read aloud by the reporter as above recorded.) [692]

A. I would say that around—pardon me, but do you want to know the foreign and domestic outside of the state?

(Testimony of R. F. Williams.)

Q. Yes.

A. What I give you would be a guess, because I haven't the movement figures in my mind. I keep confusing them with sales. I would be glad to submit to Mr. St. Sure, who will submit to you later, more accurate figures for the answer of this question.

Q. Perhaps we can get at it this way. It is a fact, is it not, that every sale is eventually moved or placed in transportation in one fashion or another, isn't that true, even though a period of a few months lapses before the actual placing in transportation takes place?

Mr. St. Sure: Not necessarily out of the state. That is the thing I have in mind.

Mr. Edises: I see. Well, now——

The Witness: (Interrupting) I will give the answer to the question. The only thing is that I would like to give it with some degree of accuracy, and I am afraid I can't do it at this time.

Q. (By Mr. Edises) Your figures wouldn't vary more than a few points one way or the other? In other words, they wouldn't vary as much as 15 or 20 per cent?

A. This figure, the difference between the movement and the sales, would vary materially. I know that because—— [693]

Q. (Interrupting) Can you give us first the figure for sales and second, the figure for the movement?

A. Yes, I will be glad to segregate them like

(Testimony of R. F. Williams.)

that, if that is what you want. But I would like to give them with some degree of accuracy.

Q. Sure.

A. I can't answer that here, but I will submit that to Mr. St. Sure.

Q. You can't answer it now?

A. No. I will have them segregated for you, and I can do it and get them for you in time to include in this record.

Q. My thought was to try and get as much as possible done today. If you could give us those figures, I think that a slight variation one way or the other wouldn't be material.

A. May I see those figures? Maybe I can estimate the thing. (Referring to data, figures.)

I think your question covers only fruits. Would you object to including spinach?

Q. Let me tell you what I am trying to do. I want to find out which of your crops are sent—are chiefly sent out from the State of California.

A. Well, I can state that to you in taking apricots, peaches, pears and spinach.

Q. And about what percetnage of your total pack do these represent? [694]

A. And artichokes — what percetnage are shipped? You are trying to get out what percentage are shipped out as against the total percentage of all three or four commodities combined?

Q. Yes.

A. I would estimate that about 21 per cent of the total pack and carryover.

(Testimony of R. F. Williams.)

Q. What does that 21 per cent represent?

A. That represents those major commodities that we spoke of.

Q. The chief exports and interstate packs?

A. Well, I mean by that the packs which we ship outside of the state of California, and which go out of the state eventually, sold by us and go out of the state eventually, and the same of export, of these particular packs.

Q. Now perhaps we can get at this specific material. Taking peaches, for instance, you stated that peaches are one of the crops that are—the larger proportion of which is shipped outside the state of California?

A. Yes.

Q. Can you tell us now about what percentage of all the peaches you put up during a year are moved outside the state, moved to points outside the state of California?

A. I would say that probably 85 per cent of the peaches. I am using industry figures, rather than our own figures, [695] but I think ours would be substantially in line with the industry.

Q. How about apricots?

A. The proportion would be that great or greater.

Q. That great or greater?

A. Yes.

Q. And about what quantity of apricots do you pack during the year?

(Testimony of R. F. Williams.)

A. Well, our apricot pack would run around say from six to ten per cent of the total pack.

Q. You don't know offhand the number of cases, do you?

A. Yes, I think I can tell you—it is in the neighhood of 120,000 cases.

Q. And the number of cases of peaches that you pack during the year?

A. Peaches run around 260,000 cases.

Q. And do you pack pears?

A. Yes.

Q. About how many cases a year?

A. I am not clear on the pear pack. I would say somewhere between 50,000 and 60,000 cases.

Q. And what percentage of them is moved to points outside the State of California? About the same?

A. About the same percentage.

Q. Around 85 per cent? [696]

A. I would say so.

Q. What were the other products that you mentioned?

Mr. St. Sure: Spinach.

Q. (By Mr. Edises) How about spinach?

A. The spinach proportion would be equally as great, if not greater.

Q. Any others that move very considerably to points outside of the state?

A. No, I think those cover the major items.

Q. Is the form of insurance policy that is one of the shipping documents?

(Testimony of R. F. Williams.)

A. (Examining document) Yes.

Q. And is this the policy which is used in all cases where you yourself take out the insurance?

A. I think so. I am not positive of it, but I think it is. I wouldn't like to say this is the only form that they use, but I think it is.

Q. But all of your insurance is carried with the Niagara Fire Insurance Company?

A. I am not sure of that, but I would say that that is probably a standard form, and that that would represent the form.

Mr. Edises: I offer this in evidence as Board's Exhibit No. 12.

Trial Examiner Traynor: Admitted as Board's Exhibit [697] No. 12.

(The form of insurance contract referred to was received in evidence and marked Board's Exhibit No. 12, Witness Williams.)

Q. (By Mr. Edises) Do you buy any of your raw fruits or vegetables, or other raw materials, not speaking of machinery and things of that kind, outside of the state of California?

A. No.

Q. How about hominy?

A. Hominy?

Q. Yes.

A. That is shipped in by the people that we pack it for.

Q. Shipped in by the people you pack it for?

A. Yes.

Q. Where is it shipped in from?

(Testimony of R. F. Williams.)

A. Usually from one of the corn growing states in the East.

Q. Such as, for instance?

A. Indiana, Tennessee.

Q. Maine?

A. Illinois.

Q. Iowa?

A. Iowa.

Q. Maine?

A. No, not Maine.

Q. And what is done with the hominy after you put it up? [698]

A. What is done with it?

Q. Yes.

A. Turned back over to the people that we pack it for.

Q. Who do you pack it for?

A. Stokely.

Q. Can you identify these labels?

A. (Examining labels) Yes, I can identify these as all being labels of the Santa Cruz Fruit Packing Company.

Mr. Edises: I offer these labels, seven in number, as Board's Exhibit No. 13.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 13.

(The seven labels referred to were received in evidence and marked Board's Exhibit No. 13, Witness Williams.)

Q. (By Mr. Edises) What is this label?

A. (Examining label) That is a label of Armour & Company.

(Testimony of R. F. Williams.)

Q. And do you put up any products for Armour & Company?

A. Yes, we do. We put up for any buyer that wants to apply their label to the goods.

Mr. Edises: I offer this label in evidence as Board's Exhibit No. 14.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 14.

(The label referred to was received in evidence and marked Board's Exhibit No. 14, Witness Williams.) [699]

Q. (By Mr. Edises) About what percentage of your annual pack, or more specifically, your 1935 pack was put up under your own labels?

A. The 1935 pack under our own labels?

Q. Yes.

A. I couldn't answer that for you because the goods are not shipped and we wouldn't know what labels would be applied to them until the goods are shipped, you see, and the buyer has a right to designate what label he wants on the goods before shipment.

Q. Do you ship out any goods under your own labels?

A. Yes.

Q. To other states of the Union?

A. Yes.

Q. And to foreign countries?

A. Yes.

Q. I take it that you follow the wide spread practice in California of putting up goods under whatever label the buyer designates, is that true?

(Testimony of R. F. Williams.)

A. That is correct.

Q. What is that practice entitled in the trade?

A. Buyer's labels.

Q. Canning under buyer's labels, is that the term?

A. That is the term.

Q. Is most of your canning operations—do most of [700] your canning operations consist in canning under buyer's labels?

A. Yes, ours would be more under buyer's than our own.

Q. Are you familiar with the relative size—perhaps size isn't the best word—well, yes, the relative size and importance of the various canners' canning plants in the state of California? Do you know which are the largest?

A. You are speaking now from the standpoint of volume?

Q. From the standpoint of volume, yes.

A. I think the California Packing Corporation are recognized as the leader in the industry.

Q. About where would the Santa Cruz Fruit Packing Company come in the scale?

A. Probably fourth or fifth.

Q. Fourth or fifth?

A. Yes.

Q. Do you know how many canneries there are engaged in operations similar to you in the state of California?

A. I think there are some 57 institutions. That does not mean canneries. There are a number of institutions that have more than one cannery.

(Testimony of R. F. Williams.)

Q. A number of them have more than one cannery?

A. Yes.

Q. The Santa Cruz has more than one cannery?

A. Yes. [701]

Q. How many has it?

A. It has two.

Q. The other one is in Santa Cruz, California?

A. Seabright, yes.

Q. I show you a list entitled, "California Fruit and Vegetable Canners."

Mr. St. Sure: As to the material of this kind, I stated to Mr. Edises, subject to our objection as to the materiality, and as to the jurisdiction, and all of the other objections we have made, that I would not require him to document or show the foundation for any of this general material he wants to introduce. He has a list which he tells me shows the name of the canner, the location and the products of the various canneries in the State of California. I have no objection whatever to its going in for whatever it is worth, subject, of course to our objections, which we have previously made to all the testimony which has been offered. That is, we won't question the basis or foundation of the document.

Mr. Edises: I have no reason for questioning the accuracy of this list, Mr. St. Sure, and according to my best information and belief it is an accurate list of all the fruit and vegetable canners of California.

(Testimony of R. F. Williams.)

Mr. St. Sure: It may be so understood, and if we find any inaccuracies we can call them to the Examiner's [702] attention.

Mr. Edises: I offer this as Board's Exhibit No. 15.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 15.

(The document entitled "California Fruit and Vegetable Canners," referred to was received in evidence and marked Board's Exhibit No. 15, Witness Williams.)

Q. (By Mr. Edises) Can you glance quickly over Board's Exhibit No. 15 and state whether or not, in making your estimate, that the Santa Cruz Fruit Packing Company was fourth or fifth in size, and the extent of its operations in California; you would still make the same statement after consulting that list of canners?

A. No, I don't think I would. This list carries such people as Heinz in it, and I don't think we want to say that we are going to take in companies of that character. I am speaking of——

Q. (Interrupting) California corporations?

A. California fruit and vegetable packers.

Q. Whose chief place of business is in California?

A. Yes, and whose chief operations are in California. I think that the volume of our operation is somewhere around fourth or fifth in the industry.

Mr. Edises: I show you this, Mr. St. Sure. (Indicating document.) [703]

Mr. St. Sure: With the same understanding, without waiving any of our objections, and subject

(Testimony of R. F. Williams.)

to the same objections already made, we have no reason to question the method of preparation or the accuracy of the statement presented. It is a statement of the exports as shown by the Customshouse service, and is a declaration of the exports of the Santa Cruz Fruit Packing Company.

If Mr. Edises states it was prepared under his supervision, and is only a summary of those statements, why it may be offered for what it may be worth, subject to our previous objections. There is no use asking Mr. Williams to identify it. We will let it go in with the same undertsanding as the other material is going in.

Mr. Edises: All right. This data was either prepared by myself or under my supervision, and it was compiled from the original records in the possession of the U. S. Customs Service at the Customs House in San Francisco.

I offer in evidence a record of foreign shipments of the Santa Cruz Fruit Packing Company products, as evidenced by export declarations filed with U. S. Customs Service, San Francisco, California, and covering the period July 18, 1935 to October 1, 1935.

If you care to look at this, I will let you.

The Witness: No, I don't think so. You probably have got it from documents. [704]

Trial Examiner Traynor: Admitted as Board's Exhibit No. 16.

(The data referred to, consisting of 20 pages, was received in evidence and marked Board's Exhibit No. 16.)

(Testimony of R. F. Williams.)

Q. (By Mr. Edises) I take it that all your shipments, both foreign and intercoastal, are declared with the Customs House; is that correct?

A. You mean by intercoastal—if it is intercoastal we consider that domestic shipments.

Q. And you don't declare your intercoastal shipments?

A. No, we do not.

Q. Do you pack fruit for salad?

A. No.

Q. Do you pack olives?

A. No.

Q. Royal Anne cherries?

A. We do at times.

Q. What about—about what proportion of your pack would you say?

A. None in 1935.

Q. None in 1935?

A. No.

Q. Any raisins?

A. No.

Q. Canned grapes? [705]

Q. Is the Santa Cruz Fruit Packing Company a member of the Canners League?

A. No.

Q. Are you familiar with the functions of the Canners League, California Canners League, what service they render to the trade and just what is their function?

A. Well, I dont' know that I could answer that question for you probably as well as some member of the Canners League. We might have some differ-

(Testimony of R. F. Williams.)

ences of opinion about the functions of the Canners League.

Q. Apart from any controversial matters, with which I am not concerned, one of their functions is the filing of statistical information, is it not, in regard to the industry?

A. Yes. We don't report to them.

Q. You don't report to them?

A. No.

Q. They do, however, have contacts in that connection in getting information from almost every canner in the State of California without exception, except, of course, yours and possibly a few others; is that not true?

A. I would be answering something I wouldn't know anything about if I told you "Yes," or "No" to that.

Q. Do all of your foreign shipments go through the Port of San Francisco? [706]

A. Yes.

Mr. St. Sure: We like to think we have a port over here too—go through San Francisco Bay.

The Witness: You mean the Bay area?

Q. (By Mr. Edises) The Bay area.

A. Yes.

Q. And all your foreign shipments are declared at the Customs House at San Francisco?

A. Yes, I am satisfied that they are.

Q. In other words, you don't ship out through any other ports, other than the Bay region?

A. No, we do not.

Q. Of course you understand that San Francisco is headquarters of this Customs House district?

(Testimony of R. F. Williams.)

A. Yes, the declarations are made through San Francisco.

Q. And all of your intercoastal shipments by water are likewise through the Port of San Francisco in this Bay area, is that correct?

A. Yes.

Q. I am just checking a bit further. Do you pack pineapples?

A. No.

Q. Berries?

A. No.

Q. Apples? [707]

A. No.

Q. Fruit cocktail?

A. No.

Q. Citrus juices?

A. No.

Q. Plums or prunes?

A. Plums, yes.

Q. Did you pack plums at your Oakland plant?

A. Yes.

Q. About what percentage of your pack would be for plums?

A. Less than one per cent.

Q. Figs?

A. No.

Q. And dealing now with vegetables, do you pack peas?

A. Yes.

Q. About what percentage of your vegetable pack is peas?

A. Somewhere between five and ten per cent.

Q. And asparagus you mentioned.

A. Yes.

Q. And about what proportion of the total pack is asparagus?

A. I think I stated before that it was around two per cent or three per cent, wasn't it?

Mr. St. Sure: Two per cent I think you said.

The Witness: Yes. [708]

Q. (By Mr. Edises) Is most of the asparagus shipped out, or moved outside the state of California—and that is a large export pack?

A. I think I have given you the percentage heretofore with respect to asparagus.

Q. About 85 per cent or better?

A. Yes.

Q. How about snap beans?

A. No.

Q. You don't pack any snap beans?

A. No.

Q. Corn?

A. No.

Q. Root vegetables?

A. No.

Q. Or pumpkin or squash?

A. No.

Q. Sauerkraut?

A. No.

Q. Pimentos?

A. No.

Q. One further question, or two. As far as the employment of the warehouse workers is concerned, the men have testified that if they worked at Santa

(Testimony of R. F. Williams.)

Cruz they were, from time to time, sent over to help Stokely; and if they worked [709] at Stokely, they were from time to time sent over to help at the Santa Cruz warehouse. Is that your practice?

A. As I told you heretofore, I think that the foremen have been instructed, as far as possible, to keep these men employed rather than to throw them out of employment, and I think that they do have arrangements between themselves whereby they take one another's men so as to spread the work as far as possible without going into the——

Q. (Interrupting) Yes, but I am referring not so much to the question of when a man is about to be discharged, but when there are slack periods at Stokely's.

A. That is, as far as we are concerned, the same thing. We are talking about hours of employment. Most of these men want as many hours as possible.

Q. And Mr. Remington is your general superintendent?

A. Yes sir.

Q. And he is in charge of the Stokely warehouse and the Santa Cruz warehouse; is that correct?

A. That is correct.

Q. And you are his immediate superior, are you not?

A. Well, when you said Mr. Remington is in charge of the Stokely warehouse——

Q. (Interrupting) As far as employment is concerned.

A. The Stokely Company have an executive on the Pacific Coast. [710]

(Testimony of R. F. Williams.)

Q. I mean as far as the direct running of the warehouse is concerned.

A. It is under the Stokely foreman.

Q. Who is their foreman?

A. Stanley Morris.

Q. But Mr. Morris, nevertheless, is under the general supervision, is he not, of either Mr. Remington or Mr. Huddleson or yourself?

A. Well, I would say, technically, no; but to all purposes probably yes. In other words, any supervisory work that we do for them is in the nature of not taking up the executive's time that is out here to look out after it.

Q. All the men employed in the different warehouses, the Stokely warehouse and the Santa Cruz warehouse, are all paid by Santa Cruz Fruit Packing Company checks, is that correct?

A. I think they are paid by Santa Cruz checks and the checks are exchanged at the end of the week. In other words, we do it for convenience; again, it is merely a matter of accounting for them.

Q. And when Mr. Huddleson, for example, had occasion to speak to the men, that was on Monday, August 5th, he called in the men from the Stokely and the Santa Cruz warehouses both. In other words, it seems to be true, is it not, that as far as the employment of the men is [711] concerned, both Stokely and Santa Cruz warehouses are something of a unit?

A. Well, with that one exception, that the foreman in the Stokely warehouse does the employing

(Testimony of R. F. Williams.)

and has the right to discharge any of the men in that particular warehouse.

Q. All other features pertaining to the employment of the men, other than the fact that San Morris works for Stokely, both of the warehouses are operated as a unit, is that true?

A. No, no they are not, because——

Q. (Interrupting) As far as employment is concerned.

A. The employment is done practically together in that character of labor. The employment is done by the foreman, by the warehouse man, the foreman, and they would have charge of the employment.

Q. You have now contracted out the warehouse labor?

A. I think Mr. Huddleson has a contract, of which you have a copy.

Q. And the contractor is Mr. Manuel Gomez, is that correct?

A. Yes.

Q. And that contract was made by Mr.——

Mr. St. Sure: (Interrupting) You have a copy of it, I think.

Mr. Edises: Yes. [712]

Q. (By Mr. Edises) Mr. Gomez is in charge of labor at both the Stokely and Santa Cruz warehouse, is he not?

A. I believe he is.

Q. And there was just the one contract made with Mr. Gomez?

(Testimony of R. F. Williams.)

A. As far as I know, yes. I don't know that they have any other contract covering the other warehouse.

Q. You would know, would you not, if some Stokely representative had come and contracted independently with Gomez in regard to the Stokely warehouse?

A. I think I would.

Q. There hasn't been such a contract made?

A. No suggestion of that sort made to me, no.

Q. And as far as you know, the contract which was entered into between the Santa Cruz Fruit Packing Company and Manuel Gomez, and signed by E. E. Huddleson and M. T. Gomez applies to the labor at the Stokely warehouse as well as at the Santa Cruz warehouse?

A. I think it does, but I am not positive about it.

Q. You would know, of course, if there were such a contract entered into, would you not?

A. Yes, I think I would.

Mr. Edises: We offer the contract in evidence as Board's Exhibit No. 17.

Mr. St. Sure: Again, subject to the same objections previously made—a copy of which contract we furnished to [713] the Board. We do not question the fact that the copy is offered, but we do reserve the same objections as previously made to the other testimony and evidence offered.

Mr. Edises: It will be stipulated that this is a true and correct copy of the original contract entered into in regard to the warehouse labor between

(Testimony of R. F. Williams.)

the Santa Cruz Fruit Packing Company and Manuel Gomez?

Mr. St. Sure: Yes.

Trial Examiner Traynor: Admitted as Board's Exhibit No. 17.

(The copy of contract referred to was received in evidence and marked Board's Exhibit No. 17, Witness Williams.)

Q. (By Mr. Edises) It is a fact, is it not, that Mr. Gomez at the present time employs his own men in both warehouses, Stokely and Santa Cruz?

A. Yes, I think that is true.

Q. And has been doing so since what date?

A. Since the date of his contract. I don't recall the date myself.

Q. Which is the 7th day of August, 1935?

A. Yes.

Mr. Edises: I think that is all. Thank you very much, Mr. Williams.

Mr. St. Sure: No questions. [714]

Trial Examiner Traynor: We will recess until 2:30.

(Thereupon, at 1:00 o'clock p. m., a recess was taken until 2:30 o'clock p. m.) [715]

After Recess.

(The hearing was resumed at 2:30 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner Traynor: Are counsel ready?

Mr. Edises: Yes, Mr. Examiner.

Mr. St. Sure: Ready, Mr. Examiner.

Mr. Edises: Mr. Ellis.

FERN ELLIS,

called as a witness for the National Labor Relations Board, having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Fern Ellis.

Q. Where do you live?

A. 2616 East 11th Street, Oakland.

Q. Are you married?

A. Yes.

Q. Any children?

A. One.

Q. When did you go to work for Stokely?

A. Two years ago; a couple of seasons ago.

Q. Who hired you?

A. Joe Remington hired me.

Q. Who is he?

A. The superintendent out there. [716]

Q. He hired you to work at the Stokely plant, is that correct?

A. No, he hired me to work at the Santa Cruz plant out in front; that is, the preparation. Then I went out to Stokely later on.

Q. How did you happen to go over to Stokely?

A. Well, I was just sent over there.

Q. Who sent you?

(Testimony of Fern Ellis.)

A. I was hired over there.

Q. Were you rehired?

A. No, more or less transferred.

Q. Do you know who transferred you?

A. Stan Morris, he just gave me a job.

Q. He told you to come over?

A. Yes.

Q. You kept getting the same type of pay check, did you?

A. Yes.

Q. And the check had Santa Cruz Fruit Packing Company's name on it?

A. Yes.

Q. What was your job around the warehouse?

A. Just everything.

Q. Shifted from one job to another as the occasion required?

A. Yes. [717]

Q. Did you at various times do loading?

A. Yes.

Q. Did you load trucks with goods that were destined for the dock?

A. Yes.

Q. Did you likewise load box cars?

A. Yes.

Q. When did you apply for membership in the union?

A. In the latter part of July.

Q. What did you join the union for?

A. Well, for better working conditions, more money.

(Testimony of Fern Ellis.)

Q. What did you think the union could do for you in that connection?

A. Well, when men are organized they can do more.

Q. Did you expect the union to represent you in negotiations with the company?

A. Yes.

Q. What were the chief working conditions that you were concerned about?

A. The chief working conditions—well, what do you mean?

Q. Well, were you chiefly interested in shorter hours?

A. Yes.

Q. And higher wages?

A. Yes. [718]

Q. Anything else other than those?

A. That is all.

Q. Those were the chief items?

A. Yes.

Q. When did you get your union button?

A. Well, it was around about the 4th or 5th of August, I guess; something like that. I don't remember just exactly.

Q. You don't remember exactly when?

A. No.

Q. Were you present on Monday when Mr. Huddleson spoke to a group of the men?

A. No.

Q. Now, from the time that you first applied for membership in the union, until Thursday, August 7th, when the men were locked out, did you hear

(Testimony of Fern Ellis.)

the men discuss, urge, or advocate a strike or a walkout at the Santa Cruz plant?

A. No sir.

Q. Was that ever brought up at a meeting officially?

A. No sir.

Q. Or unofficially?

A. No sir.

Q. Did you ever hear any such action suggested as a means of action for the union?

A. No sir.

Q. In connection with winning their demands?

[719]

Q. Did you hear about the Monday night meeting shortly after it occurred?

A. Yes.

Q. Do you remember who told you about it?

A. No, the boys were just talking about it.

Q. What did they say had taken place at the meeting?

A. He told them he couldn't pay, and wouldn't be the goat. He couldn't be the first one to pay, or something like that.

Q. Do you remember whether they stated anything about what he had said about the union?

A. Well, some of the boys said he wouldn't have the union around his plant, or something like that.

Q. Did they state that he had said that?

A. Well, I understood it that way.

(Testimony of Fern Ellis.)

Q. Did they tell you anything about Mr. Huddleson's having given the men a couple of days to think it over?

A. Yes, they said that.

Q. What did you understand they were to think over?

A. Well, whether they—whether to quit or go on working.

Q. You say you went to the initiation meeting Wednesday night. Is that correct?

A. Yes.

Q. When did you first learn there was to be a meeting that night?

A. Well, it was a day or two before the meeting. [720]

Q. Do you remember who told you?

A. Yes.

Q. Who?

A. Bob Anger.

Q. Now, did you at any time have a talk with Mr. Anger, or a conversation with him, in which he told you about what time that the men were to get off on Wednesday to go to the meeting.

A. Yes, he said at 4:30.

Q. When did you have that conversation?

A. It was at noon; I don't remember when we were talking about it.

Q. Was it the same day as the initiation meeting?

A. It was the same time, or the day before.

Q. What did he tell you in that connection?

(Testimony of Fern Ellis.)

A. He told me that he was going to see Toresen, and tell him about it; and then later on he told me he did tell him.

Q. What did he say Toresen had said, if anything?

A. He didn't say what Toresen had said. He said he told Toresen they were going to get off at 4:30.

Q. Can you remember the exact words that he used in telling you about getting off?

A. No.

Q. Did you understand that you had gotten permission to get off? [721]

A. Yes.

Q. Now, what time did you knock off on Wednesday?

A. Knocked off at 4:30.

Q. Was that because you had gotten permission to knock off at 4:30 on account of the meeting?

A. No, we was through with work.

Q. How did you determine when you were through for the day?

A. Well, we usually—if it is not in the season, we don't work so many hours, unless we work over at Santa Cruz.

Q. You worked on the Stokely side?

A. Yes.

Q. Who checked you out that day?

A. Manuel Frates.

Q. Who is he?

A. Assistant foreman.

(Testimony of Fern Ellis.)

Q. He checked you out every day?

A. Yes.

Q. And your checking out had nothing to do with going to the meeting that night?

A. No.

Q. Did you go to the meeting?

A. Yes.

Mr. Edises: Pardon me. You stated that you had.

Q. (By Mr. Edises) What time did you get to the meeting?

A. Well, I judge around 8:30, or nine. [722]

Q. How long did the meeting last?

A. About an hour and a half.

Q. Do you remember what was said and done at the meeting?

A. Well, they read the agreement.

Q. Do you remember who read it?

A. I think it was Bob Anger.

Q. Bob Anger?

A. Yes.

Q. Was there any discussion of the agreement, or its terms afterwards?

A. I don't remember if there was.

Q. What else was said then?

A. Then they initiated us.

Q. Did various union officials make speeches?

A. No, no.

Q. Well, the men were addressed, were they not, by various persons?

A. Yes.

Q. Who made the address?

(Testimony of Fern Ellis.)

A. Mr. Woods.

Q. Who else?

A. Mr. Tarling.

Q. Who is Mr. Tarling?

A. He was one of the fellows that was there.

Q. What did they discuss, or what did they tell you, talk [723] to you about?

A. I don't remember everything. I think it was Mr. Woods who said they wanted to get the meeting through in order that the fellows could go back to work, the night shift.

Q. Did he state specifically who was to go back to work?

A. It was understood the night shift.

Q. Was that all of the night shift, or just certain sections of the night shift?

A. I don't know anything of the night shift because I didn't work on that side.

Q. During and after the meeting did you expect to be able to return to work the following morning as usual?

A. Yes.

Q. Now, was there any discussion at this meeting of Mr. Huddleson's statement that the men would have to go with him or go with the union, or any discussion about his speech to the boys on Monday night, that you remember?

A. No, I don't remember if there was.

Q. Did Mr. Woods and Mr. Tarling tell you anything about the beneficial affects of union activities and things of that sort?

(Testimony of Fern Ellis.)

A. No.

Q. Then do you remember what they talked about? They must have said something in addition to the formal initiation. [724]

A. They said they were going to take the agreement out and send it to him, or something like that.

Q. Do you remember whether it was stated that the agreement had already been sent or not?

A. Maybe they had already sent it; I don't remember just what they said about the agreement.

Q. What was done—what was the chief activity during that meeting, other than the initiation? What was the chief subject of conversation, if you can remember?

A. Well, there was just more or less of a—well, they just initiated us, I guess; that was what we were there for.

Q. Was it a formal meeting? Was there a chairman presiding?

A. I guess Mr. Woods acted as chairman, I don't know.

Q. Was there a discussion from the floor from the members?

A. No; I don't remember if there was.

Q. Is it your impression that the larger part of the meeting was taken up with discussing this point in regard to the agreement, and so on?

A. Yes, and then the initiation.

Q. And then the initiation?

A. Yes, and that was all.

Q. Were the terms of the agreement discussed?

(Testimony of Fern Ellis.)

A. Well, he read it, but I don't remember what he said.

Q. Have you ever belonged to a union before? [725]

A. No sir.

Q. Did you know anything about union activities previously?

A. No sir.

Q. Did you show up for work the following morning?

A. Yes.

Q. What time did you get there?

A. It was around 7:30, I guess.

Q. What did you find, and what did you do after you got there?

A. The watchman said, "No work." Those were his orders.

Q. What was that?

A. He said, "No work; orders."

Q. Did he say who he got the orders from?

A. No, he didn't say.

Q. Did you find the picket line already established when you got there?

A. No, not yet it wasn't.

Q. Did any one seem to be in charge of the men in front of the plant that morning?

A. No.

Q. Were any of the union leaders there?

A. No.

Q. Was Mr. Anger there?

A. Yes, I think he was.

(Testimony of Fern Ellis.)

Q. Mr. Anger was the organizer, was he not? [726]

A. I think so.

Q. Did you serve on the picket line?

A. Who was that?

Q. Did you do any picket duty?

A. Yes. Oh, me? Yes.

Q. How long?

A. All the time.

Q. During the entire time that the line was established?

A. Yes.

Q. Did you ever commit any act of force or violence against any truck driver or any employe at the Santa Cruz plant?

A. No sir.

Q. Were you ever instructed by the union to commit any act of force or violence?

A. No sir.

Q. What did you do as a picket?

A. Well, we just walked up and down 14th Street, and stopped trucks.

Q. When you say "stopped trucks," what do you mean?

A. Oh, just held up our hands and said, "Stop."

Q. You didn't throw any rocks at the windshield?

A. No.

Q. What did you say to the truck drivers?

A. Well, we told them there was a picket line there. [727]

(Testimony of Fern Ellis.)

Q. What did these drivers do?

A. Well, some of them had gone in; others would turn around and go back.

Q. What did you do about the ones who turned and went in?

A. Nothing.

Q. If the Board orders your reinstatement, will you take your job back?

A. Yes sir.

Mr. St. Sure: No questions.

Mr. Edises: That is all.

Trial Examiner Traynor: That is all.

(Witness excused.)

Mr. Edises: Mr. Carmo.

JOE CARMO,

called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Edises) What is your name?

A. Joe Carmo.

Q. Where do you live?

A. 6109 Eastlawn Street, Oakland.

Q. Are you married?

A. Yes.

Q. Any children?

A. Two [728]

(Testimony of Joe Carmo.)

A. Two.

Q. How old?

A. 11 and 10.

Q. Who did you work for, Santa Cruz or Stokely?

A. I worked in both places.

Q. Where did you first go to work?

A. I got hired at Stokely.

Q. Who hired you?

A. Mr. Morris.

Q. You were later transferred to Santa Cruz?

A. Well, I used to work for both of them. I used to run the labeling machine. They were short at one end, I was transferred back and forth.

Q. You were transferred back and forth?

A. Yes.

Q. Did you do general warehouse work?

A. Mostly running the labeling machine, but when there was no labeling to do, I used to load trucks and general warehouse work.

Q. Did you likewise load box cars?

A. Everything.

Q. When did you apply for membership in the union?

A. Well, as closely as I can recall, about two weeks before the lockout?

Q. And through whom did you apply?

A. Mr. Bob Anger. [729]

Q. What led you to apply for membership in the union?

(Testimony of Joe Carmo.)

A. Well, we were working for 35 cents an hour. He told me the terms of the union.

Q. What do you mean he told you the terms of the union?

A. Well, the union regulations called for better terms, better wages.

Q. What did the union regulations call for?

A. Well, something like 62½ cents an hour, and eight hours a day.

Q. How many hours a week?

A. About 48, I think.

Q. You say about 48?

A. Yes.

Q. Are you sure of that?

A. I am pretty sure; I am pretty sure it was 48.

Q. Who told you about the terms of the union?

A. Mr. Anger.

Q. What did you expect the union to do for you?

A. Well, I expected them to take it up with Mr. Huddleson, bring the terms to him, and see if we could get together and arbitrate.

Q. You mean negotiate?

A. Yes, something like that.

Q. When did you get your union button?

A. I think it was on a Monday morning. [730]

Q. Was that August 5th?

A. Well, that is before the lockout, about August 5th.

Q. Two or three days before the lockout?

(Testimony of Joe Carmo.)

A. Yes.

Q. On a Monday?

A. Yes, on a Monday.

Q. Were you there Monday when Mr. Huddleson spoke to the boys?

A. Yes sir.

Q. Who told you about it at the Stokely warehouse? Were you working at Stokely or Santa Cruz?

A. I was at Santa Cruz.

Q. Who told you about it?

A. Well, we went out to supper and were supposed to come back that night. We got in there. Mr. Toresen told us to just wait awhile and Mr. Huddleson will talk to us, and to get everybody together.

Q. Where was this meeting held?

A. Right next to the warehouse office, between the printing machine and the warehouse office.

Q. How many men were there?

A. Thirty-five or forty men.

Q. Now, as closely as you can recall, tell us just what was said and done at that meeting.

A. You mean what Mr. Huddleson said? [731]

Q. What Mr. Huddleson said, and so forth.

A. Well, I remember him saying he knew that we were trying to organize a union. He got notice from the union about two or three days before, about that, since the following Friday, the Friday before.

(Testimony of Joe Carmo.)

Q. He said he got—he said he had gotten notice from the union?

A. The Friday before that; he knew just what we were going to do. He said as far as joining the union, it was O. K. He was a union man himself in former years, but as far as he had anything to do with the cannery, he would have nothing to do with the union. That is the way he put it up to us. He gave us two days to think it over.

He said, "Throw away your buttons and you can have your jobs."

Q. Did he say anything about a contractor?

A. He said he could get a contractor there to do the work for about half a cent less than he was having it done for now. He said, "If you boys walk out, I will have a contractor here to do your job cheaper than I can have it done now."

Q. Did he say that he knew what the wage scale of the union was?

A. He said he had notice from the union, and he had some kind of an agreement received through them, or [732] something like that—the agreement of the union terms and everything. He said he had gotten that on the Friday before.

Q. Did he say anything that would indicate that he knew what the union was asking?

A. The way he talked, I think he did.

Q. Didn't he state he knew the union was asking for 62½ cents?

A. I don't remember him mentioning the exact amount.

(Testimony of Joe Carmo.)

Q. You say he gave you two or three days to think it over?

A. A couple of days to think it over.

Q. Did he tell you that you had to make up your minds by a certain time?

A. Yes. "I give you a couple of days to make up your minds; either throw your buttons away, stay on your work; otherwise get somebody else to take your place."

Q. I guess I don't make myself clear. You have used the phrase "a couple of days." But did he state that you boys must make up your minds by such and such a time, a specific time?

A. No certain time.

Q. He just said, "a couple of days." Is that correct?

A. A couple of days.

Q. Do you know Mr. Gomez?

A. I seen him around. He was pointed out to me. [733]

Q. When?

A. About two or three days before the lock-out. Monday, I imagine it was. Monday, I imagine was the first time I seen him around there.

Q. Who pointed him out to you?

A. One of the boys, I don't know who it was. They told me he was supposed to be the contractor coming in there.

Q. Do you know who told you that?

A. I think Bob told me.

(Testimony of Joe Carmo.)

Q. Was that after the meeting in which Mr. Huddleson spoke to the men or before?

A. That was before the meeting; it was in the morning.

Q. And what did you see Gomez doing?

A. Just walking around, taking a look. Looking things over, the label machines, tags, papers, and so forth.

Q. Had you ever seen him around the plant before Monday?

A. Not before Monday.

Q. Did you see him on Tuesday?

A. I seen him Tuesday and Wednesday.

Q. Did you see him in any of the offices of the plant on any of those days?

A. I seen him in Mr. Toresen's warehouse office.

Q. Talking to Mr. Toresen?

A. Yes.

Q. What day was that? [734]

A. I think it was on a Tuesday, sometime Tuesday, I don't know whether in the morning or afternoon, sometime Tuesday I saw him in there.

Q. And you went to the initiation meeting Wednesday night?

A. I did.

Q. Who told you about the meeting?

A. Bob Anger told me that we were going to have a meeting Wednesday night. Told me that about Tuesday.

Q. Do you know if Mr. Anger ever told you anything about whether or not he had gotten permission to get off?

(Testimony of Joe Carmo.)

A. Yes, he did.

Q. When did he tell you that?

A. He told me that Wednesday morning.

Q. What did he say?

A. Well, he said he went up to Mr. Toresen and asked him for permission to get off that day about 4:30, and he said Toresen told him, "That is fine, Bob; I am glad you told me. Go ahead! I know just what to do."

Q. Did Mr. Anger tell you all that?

A. He did.

Q. You are not adding anything to it as a result of what you have heard the men say?

A. That is just what he told me. He asked Mr. Toresen, and Toresen said, "It's O. K., Bob, I am glad you told me."

Q. By the way, do you know why it was necessary for the men [735] to get off at 4:30 when the meeting wasn't until eight?

A. Well, I couldn't tell you why, but I thought we would get out early, get home, get ready before the meeting.

Q. Is it true a lot of men live out in San Leandro?

A. They do, and some live out in Hayward.

Q. Do you remember just what took place at the meeting Wednesday night?

A. Well, the meeting was—the principal thing was to initiate the boys, pay all the dues, so far as I can remember.

(Testimony of Joe Carmo.)

Q. Do you remember anything else? Was the agreement read at that time?

A. The agreement was read.

Q. Do you know who read it?

A. I think it was Mr. Woods.

Q. You think it was Mr. Woods?

A. Yes.

Q. Are you positive of that?

A. Well, I am pretty sure it was Mr. Woods.

Q. When did you first meet Mr. Woods?

A. The night of the meeting.

Q. The night of the meeting?

A. Wednesday night.

Q. Now, was there any discussion about the agreement?

A. Well, he told us he had been to see Mr. Huddleson.

Q. Woods said that? [736]

A. Woods said that. They were going out to see him, to see if they could get together and get some kind of an agreement between us and Mr. Huddleson.

Q. Did Mr. Anger take part in the meeting?

A. Not that I can remember.

Q. He was there, however, was he not?

A. He was there.

Q. What else was said about the agreement, if you remember? Were its terms discussed by the men?

A. At the meeting?

Q. Yes.

(Testimony of Joe Carmo.)

A. No, not by the men, because we kind of left all that up to Mr. Woods. He was our representative, and we left everything up to him. He was to represent us to Mr. Huddleson.

Q. Had you ever belonged to a union before?

A. I never did.

Q. Know anything about unions?

A. Well, I don't—I didn't know until then.

Q. Now, from the time that you first applied for membership in the union, around the middle of July, I understand, until Thursday morning, August 8th, when you were locked out, did you ever hear—was there any discussion among the men either at the union meeting or informally about a walkout or a strike at the Santa Cruz plant?

A. Not that I recall; never heard anything. [737]

Q. When you were at the meeting Wednesday night did you expect to go to work as usual the next morning?

A. Well, I was told to go back to work as usual.

Q. Who told you?

A. Mr. Woods, and Mr. Tarling.

Q. Do you remember when he said that?

A. Right at the end of the meeting, he told us boys to go back to work as if nothing had happened.

Q. You say "as if nothing had happened," what do you mean by that?

A. Well, as if we hadn't joined the union.

Q. Was there any doubt about your being permitted not to go back to work?

(Testimony of Joe Carmo.)

A. Not that I know anything about.

Q. By attending the meeting Wednesday night, did that cause you any doubt as to whether you would be permitted to return to work the next day?

A. Not to me.

Q. Did you show up the next morning?

A. I did.

Q. About what time?

A. About 7:30, a quarter to eight.

Q. What did you find when you got there?

A. When I got there I found all the boys out, I didn't get nowheres near the place. I got pretty close and they told me there was no use going any further. [738]

Q. Who told you?

A. Well, some of the boys who had been at the meeting the night before. I don't recall who it was.

Q. Did you do picket duty?

A. I did.

Q. What were your duties in that connection? What were you supposed to do?

A. We were supposed to stop any union men and tell them what was going on, tell them there was a lockout there and stop them whether they wanted to go in or not.

Q. How did you stop them?

A. Well, we just flagged them, we flagged the teamsters.

Q. Did you flag any trucks that were not driven by union drivers?

(Testimony of Joe Carmo.)

A. Well, we used to flag every truck. We didn't know whether they were or not until we stopped and talked to them.

Q. Did you ask them not to go through the picket lines?

A. Well, we told them there was a picket line there.

Q. Did you ever tell them they had better watch out if they did go through?

A. No, we didn't threaten any one.

Q. Do you know if any one else did?

A. Not that I know.

Q. If the Board orders your reinstatement, will you take your job back? [739]

A. I certainly will.

Mr. Edises: That is all.

Mr. St. Sure: I have no questions.

Mr. Edises: That is all.

Trial Examiner Traynor: That is all.

(The witness excused.)

Mr. Edises: I would like to offer in evidence time cards for the Santa Cruz Fruit Packing Company for the dates August 6th, 1935, August 7th, 1935, and August 8th, 1935. The cards for the last two days have the "Santa Cruz Fruit Packing Company" clipped off at the end, and the name Manuel Gomez stamped upon them.

Apparently, the first time punched on the cards for August 7th is 6 p. m., with the exception of *the* of Joe Ferrerra, which is first punched 7 p. m.

The names of Lee Long, Sam Lew, and Gee Chong appear on these cards for the 7th.

Do you know whether those names referred to——

Mr. St. Sure (Interrupting) They sound like Chinese names to me. I understand that there were two or three Chinamen that were working there after the contractor took it over; but the information is that they are not there now. I state, as a matter of information, there was an assistant superintendent, a Chinaman, a California graduate, and a man who had [740] been there a good many years. How relevant that is, I don't know.

Mr. Edises: Personally, my singling out these Chinese names has no derogatory indication, however.

May I likewise introduce the cards for the 5th of August and the 9th?

Trial Examiner Traynor: These cards will be Board's Exhibit No. 19.

(The time cards referred to for the 5th, 6th, 7th, 8th and 9th of August, were received in evidence and marked Board's Exhibit No. 19.)

Mr. Edises: I have here a copy of the letter dated August 31, 1935, addressed to Mr. Charles Real and Mr. W. M. Spooner.

Do you have the original of that letter?

Mr. St. Sure: No, I haven't the original.

Mr. Edises: Do you know whether this is a true copy?

Mr. St. Sure: I think it is a true copy. I think we furnished it to you, but subject to the same objections as the time cards and other things, we will stipulate it is a correct copy delivered personally to the men to whom it was addressed.

We can identify them as W. M. Spooner, who was secretary of the Central Labor Council of Alameda, and Charles Real, secretary of the Teamsters' Local, of the Local Federation of [741] Labor, Local No. 70, I think it is.

Mr. Edises: I offer this in evidence as a copy stipulated to me to be an exact copy of the original addressed to the parties just indicated.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 20.

(The letter referred to was received in evidence and marked Board's Exhibit No. 20.)

Mr. Edises: There is a pencil underlining of a portion of the letter which was not in the original as it was handed to us. It is simply my own marking put in later.

Also, I would like to offer in evidence seller's copy of Santa Cruz Continental Europe Canned Food Contract. I believe the British Isles and domestic contracts are in evidence but I failed to introduce that one.

Trial Examiner Traynor: Board's Exhibit No. 21.

(The document referred to, seller's copy of Santa Cruz Continental Europe Canned Foods Contract was received in evidence and marked Board's Exhibit No. 21.)

Mr. Edises: I wish to offer in evidence a certified copy——

Mr. St. Sure: (Interrupting) May I ask your purpose in that, Mr. Edises? I am just a little in the dark as to what that may have to do with this situation. I wonder what your purpose is in making the offer. [742]

Mr. Edises: It is simply a part of the general background of economic data which the decision of the Supreme Court indicate are properly introduced in cases of this kind, in which one of the elements entering into the determination of the constitutionality of the act is the economic background, and the economic justification of that.

Mr. St. Sure: (Examining document) This apparently, what you were talking about, is a certificate from the Department of Labor, and showing a compilation of the number of strikes and lockouts, number of workers involved, the man-days of idleness during 1934, January to July inclusive, July 1935.

I don't see whether these reported strikes or lockouts occurred, nor when, nor why.

Mr. Edises: My understanding is that it applies to the entire United States.

Trial Examiner Traynor: Any objection?

Mr. St. Sure: Well, if you think it has a place in the record, I have my usual objection, plus the objection I think that it is not material or relevant. I assume other questions that I may raise concerning it, that it is vague and indefinite, that it doesn't give anything definite. The other things go in, I suppose we might as well put this in.

Trial Examiner Traynor: Its bearing appears rather remote. [743]

Mr. St. Sure: If Mr. Edises thinks that it has a bearing, I have no desire to keep it out. The matter of relevancy appears, yet, if my objection is good, I suppose the varied lack of definite connection of the exhibit itself would take care of my objection. I mean, if it doesn't apply, I guess, in or out of the record, it doesn't apply.

Mr. Edises: Of course, any exhibit is only admissible for whatever weight that it has.

I would like to offer this in evidence.

Trial Examiner Traynor: All right, exhibit offered is 22.

Mr. Edises: It is a true copy of original data in regard to strikes and lockouts in the canning and preserving industry in the United States in 1934 and in January to July, 1935, by major issues involved. The original data is on file in the Bureau of Labor Statistics.

Mr. St. Sure: I simply like to point out this further ground of objection which may not be a valid one, but may be a practical one. The source of the data is not revealed. I have seen these forms

which are sent out by the Department of Labor, this particular division, which are sent out, broadcast to industry and, I suppose, labor organizations are alike, without having some knowledge of the source of the information. I suspect they are not very complete, and perhaps not to accurate. However, again, as I say, perhaps I am building [744] straw-men, because I don't think that it is material in this issue in any event.

Mr. Edises: Isador Lubin is Minister of Labor Statistics, and there is no question, I suppose, in your mind that these are official figures?

Mr. St. Sure: There is no question in my mind that it is a compilation of data on file. He doesn't certify that he has verified the data, or anything else. It is in for what it may be worth.

(The document referred to, a compilation of Bureau of Labor Statistics, was received in evidence and marked Board's Exhibit 22.)

Mr. Edises: I would like to offer in evidence a duly authenticated and verified copy of the trade mark declaration, or a trade mark declaration, of the Santa Cruz Fruit Packing Company, in particular the passage in said declaration taken over the signature of R. M. Gaddis, secretary of the Santa Cruz Fruit Packing Company, that said trade mark is used by said corporation in commerce among the several States of the United States.

Mr. St. Sure: What does the trade mark refer to, do you know?

Mr. Edises: No, it doesn't appear which particular one. I presume you have a number of them, is that correct? [745]

Mr. St. Sure: I presume they have. I am wondering what that might be. It may be, or may not—apparently, I don't know what that may refer to, what trade mark or certificate it may be a declaration of. I do not know whether it applies to all or only one of the trade marks that the Fruit Company has, whether it relates to some particular brand or product, I don't know; or whether it is a product that is not in use.

Mr. Edises: Well, I offer this for what it is worth.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 23.

(The trade mark certificate referred to was received in evidence and marked Board's Exhibit No. 23.)

Mr. Edises: I submit herewith in evidence a four-page mimeographed compilation headed, "California Pack Statistics for 1934." These statistics are compiled and made available by the Canners' League of California through their statistical department, which is under the supervision of Miss Sylvia Kempton. The figures are generally accepted in the trade as being accurate, and I am able to state with my own knowledge as a result of my conversation with Miss Kempton, who is the statistician, that every effort is made to obtain as complete a statistical showing as possible.

The exhibit itself states how the statistics were [746] compiled, namely, all figures were compiled by the Canners' League of California from individual reports of canners in both Northern and Southern California. Reports were received from canners representing in excess of 99 per cent of the pack, and a careful estimate was made of the negligible pack not reported. The cling peach pack, as shown herein, represents the final figures for the state as compiled by the California Cling Peach Control Committee (1934) period. The asparagus pack represents the final figures for the state as compiled by the California Canning Asparagus Control Committee.

Mr. St. Sure has informed me that he will offer no objection as to the foundation for those figures, confining his objection to the same grounds hitherto.

Mr. St. Sure: May I ask what purpose you offer this for, Mr. Edises? There are a lot of things apparently irrelevant. Did you think this also forms a picture of the industry?

Mr. Edises: Yes, this forms a picture of the industry.

Mr. St. Sure: This relates to 1934. There is no question the Canners' League, the trade organization which has, I assume, reputable statisticians. Mr. Williams states the Santa Cruz report does not refer to it. I don't think that necessarily means the statistics are not as accurate as the materials they have. I won't object to the matter. I say my objection does go to a lack of foundation being made. [747] I state the objection in addition to

those I have made heretofore as to materiality and relevancy. Those are more formal objections than the other.

Mr. Edises: You are not offering any objection as to the accuracy of the figures?

Mr. St. Sure No, I don't want to stipulate they are accurate, but I assume they are accurate as they purport to be for the year 1934.

Mr. Edises: All right, I offer that in evidence.

Trial Examiner Traynor: It may be received as Board's No. 24.

(The pamphlet consisting of four pages of statistics was received in evidence and marked Board's Exhibit No. 24.)

Mr. Edises: The materials which I am offering in evidence at the present time are applicable not exclusively, of course, to the Santa Cruz Fruit Packing Company, but are intended to convey a picture of the scope and volume and extent and general nature and attributes of the fruit and vegetable canning industry in the State of California, and as much as possible the region in and around San Francisco Bay.

Mr. St. Sure: (Examining document) It purports to be a compilation of domestic exports of canned fruits and canned vegetables during 1933, listed according to customs districts. It is 1933, and in the second place it bears in addition to figures applicable to San Francisco, figures from about 20 or [748] 30 other ports. It embraces fruits, grapefruits, loganberries, cranberries, apples and applesauce, prunes, pineapples, fruits for

salads—so many things which, it seems to me are as remote to this case as some of the ports mentioned on this list here (indicating.)

Mr. Edises: The value of including the shipments through other customs districts is for the basis of furnishing a comparison between the volume of business handled by these others, these other customs districts and that handled through San Francisco, conveying a much clearer understanding of the importance of the Port of San Francisco and the region which contributes its products to this port, than would be possible by simply isolating the figures applicable to San Francisco alone.

Mr. St. Sure: Well, I make the same objections and the additional objection now that if I can stress the matter of remoteness, we are getting more and more remote.

Trial Examiner Traynor: It looks very remote to me.

Mr. Edises: I seriously question your statement of its remoteness. It is remote in a very limited sense, if we imagine the only issue in this case is the pure question of fact as to the circumstances under which the men were discharged; but as far as the issues of constitutionality are concerned, I think all of this economic data has a bearing. [749]

Mr. St. Sure: I want to be agreeable and waive objection to technical information, but I do not wish the record to be filled with material that I consider encroaches upon the question of being relevant.

My objection goes first, as to the matter of time, 1933; and second, on the matter of foundation, and the element of remoteness.

These figures and these schedules do not purport to show the various products from the port—I am just wondering whether or not San Francisco had the benefit of this compilation. Let me see! San Diego—well, I don't suppose it is going to serve any great purpose for us to discuss the question of whether this is remote; but I presume the weight to be given to it is again a matter for the Examiner to determine.

While I can agree with you that there is undoubtedly some reason for showing the economic background, as you say, of the industry, I question in my mind just how these things tie in, on what basis you argue for figures of this kind, and how they give any picture of the industry.

Mr. Edises: Certainly, these have a bearing on the question of the degree to which shipments of products produced in the industry are placed in commerce, do they not?

Mr. St. Sure: That, I don't know. That is my question. [750]

Mr. Edises: Well, I don't see how that is possible, for these figures are for domestic exports. Exports mean something definite. It means they are goods which are being shipped to foreign countries. A shipment is not designated as an export unless it is being shipped to some other port of the United States or some part of California. Moreover, the figures of the customs service apply

only to foreign commerce. The material is gathered as appears on the front cover from Foreign Commerce and Navigation of the United States, Calendar Year 1933, published by U. S. Department of Commerce, Bureau of Foreign and Domestic Commerce.

Will you agree to a stipulation, Mr. St. Sure, that this material may be introduced as of the same weight as the original source of the material?

Mr. St. Sure: I will agree to that, that that is an accurate compilation of a copy of the statistics compiled as indicated upon the cover from the sources as there stated.

Mr. Edises: That is the stipulation I would like to have. I introduce this as Board's Exhibit No. 25.

Trial Examiner Traynor: It may be admited as Board's Exhibit No. 25.

(The document referred to, entitled "Domestic Exports of Canned Fruits and Canned Vegetables During 1933, Listed According to Customs Districts," was received in evidence and marked Board's Exhibit No. 25.) [751]

Mr. Edises: I offer in evidence certain marked sections of document entitled, "Foreign, Noncontiguous and Intercoastal Tonnage San Francisco Customs District, by Commodities, January 1, 1934 to December 31, 1934." This is compiled by the Board of State Harbor Commissioners from Federal Customs Records.

The pertinent sections are underlined portions under the heading, "Intercoastal—Outbound," and

similarly marked sections under "Foreign and Non-contiguous Exports."

The purport of these figures is to show the quantities of canned fruit and canned vegetables shipped to foreign countries, and to other sections of the United States through San Francisco harbor during the year January 1, 1934 to December 31, 1934.

Mr. St. Sure: I make the same objections.

Mr. Edises: Will you waive any objections to foundation?

Mr. St. Sure: I make no objection as to foundation. I stipulate that the figures therein contained are an accurate compilation of the original, as they purport to be.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 26.

(The document referred to was received in evidence and marked Board's Exhibit No. 26.) [752]

Mr. Edises: I would like to offer in evidence the same document dealing with the period January 1, 1933 to December 31, 1933, simply giving a two year picture of it.

Mr. St. Sure: I make the same objections, the same stipulation.

Mr. Edises: The pertinent sections are marked in ink and are found under the headings, "Intercoastal—Outbound" and "Foreign and Non-contiguous Exports".

Trial Examiner Traynor: Admitted as Board's Exhibit No. 27.

(The document referred to was received in evidence and marked Board's Exhibit No. 27.)

Mr. Edises: I wish to offer a pamphlet put out by the United States Department of Commerce and Bureau of the Census, taken from the Census of Manufacturers of 1933, and containing figures which give a picture of the canning and preserving industry of the United States, segregated according to commodity groups, and dealing with such matters as the number of establishments, the number of salaried employes, number of wage earners, average per year cost of materials, value of products, value added by manufacturer.

There is a likewise segregation according to states. The sections which I desire to have introduced in evidence are marked at the side by an inked line.

I offer this in evidence as Board's Exhibit.

Mr. St. Sure: Same objection; same stipulation.

[753]

Trial Examiner Traynor: Admitted as Board's Exhibit No. 28.

(The pamphlet referred to, entitled, "Census of Manufacturers: 1933", was received in evidence and marked Board's Exhibit No. 28)

Mr. Edises: I would like to offer in evidence a pamphlet which is an original publication of the United States Department of Commerce, and the Bureau of Foreign and Domestic Commerce, entitled Summary of United States Trade with World, 1934."

I do not wish to offer the whole of this, however, but simply the indicated sections on page four, page eight, page nine, page fourteen, page sixteen and seventeen and twenty-six.

This pamphlet shows, among other things, the relative importance of canned fruits, canned vegetables, the commodities that are of most importance in this case, as compared with other export commodities.

Mr. St. Sure: Yes, same objections; same stipulations.

Trial Examiner Traynor: It may be admitted as Board's Exhibit No. 29.

(The pamphlet referred to, entitled, "Summary of United States Trade with World, 1934," was received in evidence, and marked Board's Exhibit No. 29)

Mr. Edises: I would like to offer in evidence a [754] pamphlet put out by the University of California, College of Agriculture, compiled by the Giannini Foundation of Agricultural Economics.

I don't wish to offer in evidence the whole of this, but simply a table contained on page four dealing with the pack, carry over, shipments and f. o. b. prices of canned asparagus, California, for the years 1925-1935; and a similar pamphlet dealing with the same matters in regard to canned peaches, they being perhaps the two most important—or two of the most important—canned commodities.

Mr. St. Sure: The same objection; the same stipulation.

Trial Examiner Traynor: They may be received as Board's Exhibit No. 30.

(These pamphlets, referred to, two in number, contributions from the Giannini Foundation of Ag-

ricultural Economics, were received in evidence and marked as Board's Exhibit No. 30.)

Mr. Edises: I would like to offer in evidence certain sections of the "Monthly Summary of Foreign Commerce of the United States," an official publication of the United States Department of Commerce compiled by the Division of Foreign Trade Statistics.

This deals with foreign trade from the period January 1, to August — through the month of August, 1935. The pertinent sections are the marked passages on page seven, dealing [755] with exports of domestic merchandise; specifically, canned vegetables and canned fruits.

May that be introduced with the same stipulation and same objections?

Mr. St. Sure: Yes.

Trial Examiner Traynor: It may be admitted as Exhibit No. 31.

(The pamphlet referred to, "Monthly Summary of Foreign Commerce of the United States," was received in evidence and marked Board's Exhibit No. 31.)

Mr. Edises: And a similar document dealing with the year 1934, the section which I wish to introduce being contained on page seven and marked in blue ink.

The same stipulation, same objections?

Mr. St. Sure: Yes, thank you.

Trial Examiner Traynor: Exhibit 32.

(The pamphlet referred to, "Monthly Summary of Foreign Commerce of the United States, Decem-

ber 1934," was received in evidence and marked Board's Exhibit No. 32.)

Mr. Edises: For the purpose of giving the Examiner and opposing counsel a quick, birds'-eye view of some of these—

Mr. St. Sure: (Interrupting) We'll have some nice pictures, anyway.

Mr. Edises: (Continuing)—information contained in statistical form in certain of the other documents, I wish [756] to introduce a booklet put out by "Western Canner and Packer," a trade journal, containing illustrations or diagrams of figures largely taken from the 1933 United States Census of Manufactures; and also certain of the data obtained, according to Western Canner and Packer's statement in the following fashion:

"The data presented herewith is the result of a two year intensive study of the Western Canner and Packer industry. Every bit of information contained in this report has been gathered first-hand, and not from other books or publications, newspapers or clipping services, or by guess or hearsay, of the companies in the field."

Mr. St. Sure: Same objection; same stipulation.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 33.

(The booklet refered to, a graphical presentation by "Western Canner and Packer," was received in evidence and marked Exhibit No. 33.)

Mr. Edises: I would like to offer in evidence the year book and statistical review number of "Western Canner and Packer," a trade publication. Much

of the information, statistical information, contained in this statistical number, is derived from the Canners' League; and I trust that Mr. St. Sure will be willing to make the same stipulation in regard to the data contained herein as he did in the material offered [757] from the Canners' League.

Mr. St. Sure: Same stipulation; same objections.

Mr. Edises: The passages which I desire to introduce in evidence are marked in two ways: First, by a side lining in ink; and second, by a slip of paper which possibly will not have as much permanence as the ink but will be useful in examination by the Examiner or by counsel.

The specific sections I wish to introduce are pages 26 and 27, 1934 production of canned, dried, frozen and preserved foods. However, the sections dealing with dried, frozen and preserved foods need not be considered in evidence.

On page 27, the section entitled, "Total Western Canned Fruit and Vegetable Packs," are from the period 1927—1934; a comparative fresh canned and dried fruit production chart, contained on page 28; estimated acreage—California fruit crops, on page 62; California canned fruit pack in cases, all sizes, page 64; movement and sales, canned fruits, page 68; cling peach sales and movement by quarterly periods, page 68; the section dealing specifically with peaches and the peach canning process on page 75; the pack statistics for peaches on page 76; comparative canning figures on page 76; comparing Northern California, Southern California, and other states of the Union, and other countries; the gen-

eral statement of peach canning season, and the peach canning process contained on page 81; the figures on "Movement of Goods," and [758] statements contained on the marked section, page 82; the figures on California canned apricots, packed, carry over, and exports, page 98; similar figures for canned pears, page 100; United States exports of canned fruits, by fiscal years, on page 102; Pacific Coast direct exports, canned fruits, and asparagus, page 103; Pacific Coast—and continued on page 104; rail shipments of canned fruits and vegetables, by fiscal years, and the number of tons, on page 104; California canned vegetable pack in cases, page 107; the table on page 108, "Movement and Sales, California Canned Vegetables;" the information and statistics on the canned tomato pack on page 117; likewise, the table on 118 in regard to the same; similar statements and tables on page 120 in regard to the canned asparagus pack; and the marked table on page 122 in regard to the canned spinach pack and acreage.

I offer this in evidence as Board's Exhibit. May it be stipulated—

Mr. St. Sure: (Interrupting) I have already made my stipulation and objection. They are the same.

Trial Examiner Traynor: Board's Exhibit No. 34.

(The year book, containing specific passages referred to, was received in evidence and marked Board's Exhibit No. 34.)

Mr. Edises: I offer in evidence a pamphlet put out by the University of California, College of Agri-

culture, Berkeley, [759] California, a contribution from the Giannini Foundation of Agricultural Economics, prepared by Professor H. R. Wellman, one of the leading authorities of the canning industry, certainly in California, and possibly in the United States.

I don't offer the whole of it in evidence, but I have gone through it and underlined the passages—

Mr. St. Sure (Interrupting) Put it all in.

Mr. Edises: All right, I have no objections. I offer the whole thing in evidence.

Mr. St. Sure: Is all this to be read into the record, or are we going to have to copy it in?

Trial Examiner Traynor: It isn't going to be copied into the record.

Mr. St. Sure: I stipulate these materials have been read into the record so we needn't have any question of their being copied into the record.

Mr. Edises: They don't type the exhibits into the records. If Mr. St. Sure wishes to have the entire thing in evidence, I am willing to do it, but there are a great many sections in there which have bearing. I have eliminated all of the sections in regard to the dried—

Mr. St. Sure: I don't want to suggest we go beyond where we are going.

Mr. Edises: I will offer in evidence simply the underlined [760] passages.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 35.

(The pamphlet referred to, of which Professor H. R. Wellman is the author, was received in evidence and marked Board's Exhibit No. 35.)

Mr. Edises: The voluminous document that I have in may hands I do not wish to present in

toto, by any means. It is entitled, "Facts and Figures about Canning and Packing." This is a compilation by "Western Canner & Packer," the trade journal, which is read almost exclusively, I may state, by canners.

The portions which I wish to introduce are either underlined or side lined in red ink.

The chief purpose for introducing this material is because it shows in compact statistical form the ranking of the various products according to total pack, total value of pack, total export, western percentage of United States pack, and similar matters. I don't believe there are any controversial statements contained herein.

Will Mr. St. Sure stipulate as to the——

Mr. St. Sure: (Interrupting) The same objection; same stipulation.

Trial Examiner Traynor: It may be received as Board's Exhibit No. 36. [761]

(The document referred to, "Facts and Figures About Canning and Packing," was received in evidence and marked Board's Exhibit No. 36.)

Trial Examiner Traynor: You have some more, Mr. Edises?

Mr. Edises: The only additional matters which I desire to introduce a proof on, is the connection between Stokely and Santa Cruz. I don't feel that the information contributed by Williams was at all significant on that point.

I have cause for believing that there is a tie-up, a very considerable stock ownership, of Stokely in Santa Cruz. Mr. Huddleson, of course, would be

the person to testify to it. He is in the East, I understand.

Mr. St. Sure: Yes.

Mr. Edises: I have certain information from the Division of Corporations of the State of California, and the Department of State, of the State of California, bearing on the ownership or corporate set-up, of the two corporations.

Neither of these, of course, would be competent evidence in a court of common law; but, possibly, Mr. St. Sure might find there is nothing contained in these letters that he would find objectionable, so we might be able to save some time by introducing them in evidence.

(Counsel Edises hands letters to Counsel St. Sure.)

Mr. Edises: It would be, of course, possible to get photostatic copies, duly authenticated of the originals, but that would involve additional time, of course. [762]

Mr. St. Sure: Well, in so far as the matter referred to, that is, the connection, if any, between Stokely and Santa Cruz, that is one subject upon which I cannot stipulate in the matter of short cutting any proof. So, if you desire to go forward with that, you would have to proceed however you choose to.

Mr. Edises: Well, I presume I could get the same information, namely that the total number of shares are 1100, and if 550 of them, or one-half, are owned by Stokely, I could get that, of course, from a verified statement.

Mr. St. Sure: I don't know if that is the fact. There is a listing there of some thousands of shares of stock; 16000 shares to this persons, 16000 shares to someone else. The record is there authorizing the issuance of certain specific blocks of shares.

I will state now that my best information is that there has been no transfer of stock to Stokely but there may have been an application for the purpose of authorizing issuance of stock to it. My actual inference is that there has been no actual transfer of any stock. That is maybe why Mr. Huddleson is East, I don't know. There has been no actual transfer of stock, and was no actual transfer of stock at the time of the difficulties involved here.

Mr. Edises: Is that your opinion despite this reference in the letter from the Division of Corporations, to an issu- [763] ance of 275 shares of preferred and 275 shares of common stock?

Mr. St. Sure: It says permission authorizing an issue——

Mr. Edises: "For the considerations recited in the application."

Mr. St. Sure: They must be recited in order to have the stock issued.

Mr. Edises: Not necessary.

Mr. St. Sure: I am giving you my best information. No actual transfer of stock has occurred. Now, this again, is a purely personal observation, is not to be binding upon my client but I will state that one reason why I must insist that the matters of any proof of that kind, which you feel

may be material, must be developed through ordinary channels and by proper evidence. There have been negotiations, as I understand it, for some time, for a possible or prospective interchange of interests, and that is in progress right now. I don't feel that the airing of the matter, unless it be essential at this time, will do any good to my client or Stokely Brothers. That is why I made the objection of any matter being short cut. I would be required to make every objection possible, unless or until something occurs to the relationship of my own client, except as a basis of a business deal which is now in progress.

It is unfortunate, but it just so happens that that is [764] the fact.

I will state also that from my point of view I have no personal knowledge of the basis of the transaction; and I have personally claimed none because I don't want to be put in the position of hedging on statements that I would make here.

Mr. Edises: So far as the information contained in these letters from the two Departments of State, State Departments, you have no reason, I take it, to question any of the information contained in these letters, am I correct?

Mr. St. Sure: Well, I have no reason to question it, or I have no reason to agree that it is correct. From my point of view it just isn't evidence.

Mr. Edises: The point you are making is that you have no knowledge of these facts, is that the

situation? I mean, the facts contained in these two letters.

Mr. St. Sure: No. The point I make, Mr. Edises, is so far as I am concerned in this proceeding, any proof which you desire to deduce between the alleged connection between Stokely and Santa Cruz, so far as I am concerned, will have to be presented on the basis of competent evidence.

Mr. Edises: Mr. Gaddis is secretary of the Santa Cruz Packing Company.

Mr. St. Sure: I will state frankly that I know of my own knowledge that the only person who can tell you the [765] present status of the situation as between Stokely and Santa Cruz Fruit Packing, and the status of the negotiations at the time of the strike difficulty arose, is Mr. Huddleson. Mr. Gaddis is the nominal secretary, and I can state to you that in so far as any request of information be made of Mr. Gaddis for the contracts or record of negotiations, those are in the possession of Mr. Huddleson and the knowledge is his knowledge only.

Mr. Edises: Mr. Huddleson is in the East. Do you know when he will return, Mr. St. Sure.

Mr. St. Sure: It will be a matter of some weeks.

Mr. Edises: I certainly hate to hold the hearing over.

Mr. St. Sure: I think it will take two or three weeks to analyze the material introduced today.

Mr. Edises: There are no fast ones concealed in the information.

Mr. St. Sure: No, but I expect to get educated.

Mr. Edises: Can't we short cut a part of this, Mr. St. Sure, by permitting the material contained in these letters to go in without the usual process of getting authenticated copies, for example, or statements from the originals? You know, as well as I, that if we did that, we would get the same matters exactly as they are contained here. Why not let these letters go in for what they are worth?

Mr. St. Sure: Sorry, I can't agree to that particular matter. [766]

Mr. Edises: I dislike to resort to the section of the act which states the common law rules of evidence are not binding, but in this particular case it seems to me that common sense is on the side of suggesting that these particular matters ought to be permitted to go in the record in the form that they are contained in these letters upon state officials without the additional process of verification which common law procedure would require; and I am going to ask the Examiner to allow me to introduce as the Board's Exhibit, these two letters which I herewith hand him for examination.

(Counsel Edises hands Examiner letters referred to.)

Mr. Edises: I will state also that, although it may be concurring to Mr. St. Sure's information, I have been informed from a source while not official, is, nevertheless, in my opinion, reliable, that on or about December 1934, fifty per cent of the outstanding stock of the Santa Cruz was actually sold to Stokely Brothers & Company.

Mr. St. Sure: You are in a fortunate position. If your informant is reliable, he knows more about the business of the Santa Cruz Packing Company than the officers themselves.

If you are satisfied with your informant, I can simply repeat my statement that my own employe and client, so far as I know, knows nothing about any such transaction. [767]

Trial Examiner Traynor: What are your objections to these?

Mr. St. Sure: My objections are that the documents are hearsay. No proper foundation has been laid for their admission. In addition to these, the other general objections of relevancy, lack of jurisdiction of the Board, and unconstitutionality of the act, and so forth. Now, specifically, the further objection is made upon the ground of common sense and not of law, although I like to think of evidence as based upon experience and common sense.

It can't be ascertained from letters themselves just what stock has been issued; and on the very face of the letter it appears that there are some 35000 shares of capital stock listed as having been outstanding at one time, preferred stock, in 1921, and, yet, Mr. Edises reads the letter as indicating that there are only 1100 outstanding shares.

I certainly don't think that the inference is to be drawn from the communication which Mr. Edises seems to feel that it can, either that the 550 shares referred to as having been authorized to be issued to Stokely Brothers, has been issued, or that they

constitute, as he indicates, a majority of stock of the corporation.

Mr. Edises: That information contained in there is supplemented by this information from the Department of State, which states that the capital stock originally amounted to $50000, divided into 500 shares of the par value of $100 per share. [768]

There were subsequent additions, first to $100000, divided into 1000 shares, still $100 par, of which 500 were preferred and 500 common; and then the last increase to $110000, divided into 1100 shares, still $100 par value.

If you multiply 11 by 100, it must be obvious that the 1100 is the figure, provided, the capital stock is as stated, $110000 and par value is $100.

Mr. St. Sure: It simply further emphasizes the doubt on the matter which is in my mind because the letter from the Commissioner of Corporations specifically alleged preferred stockholders, holding shares aggregating more than 35000 shares of preferred stock.

Mr. Edises states that the letter from the Department states that they were never authorized to issue—that they were never authorized to be issued, and there weren't 1100 shares altogether.

Mr. Edises: Do you know the value of the outstanding capital stock of the Santa Cruz?

Mr. St. Sure: I do not.

Trial Examiner Traynor: You can get this information from the department at Sacramento in such form as it is competent.

Mr. Edises: Yes, there is no question about its being there. The only aspect of it that doesn't

appeal to me is that it will involve holding the case open for that matter which I would rather be able to end now. [769]

Mr. St. Sure: After all, Mr. Edises, it just occurs to me that you construe this letter as indicating a transfer of stock to Stokely of more than the controlling share of the stock of the corporation.

Mr. Edises: No, an equal share.

Mr. St. Sure: Pardon?

Mr. Edises: I say, an equal share.

Mr. St. Sure: My information is that the transfer hasn't occurred. I simply say that in all fairness, we resort to the original document and get the accurate situation.

Mr. Edises: I presume that the stock transfer books of the Santa Cruz Fruit Packing Company are available, are they not?

Mr. St. Sure: I presume they are.

Mr. Edises: Is it possible for us to have them?

Mr. St. Sure: You can subpoena them.

Mr. Edises: All right. May I request that this hearing be continued——

(Remarks off the record.)

Mr. Edises: I hereby move—let me put it this way—the Board's case is complete, with the exception of the possible introduction of further proof as to the connection of Stokely Brothers & Company, Incorporated, with the Santa Cruz Fruit Packing Company. I should like to have an opportunity to indicate tomorrow as to whether or not the Board cares to introduce this proof. [770]

I shall get in touch with the Examiner, and counsel for the Respondent, as soon as I have obtained information from the National Board bearing on the introduction of this material.

In the event that that material is not to be introduced, I understand then that this hearing is to be considered as terminated and that we are to have a period of ten days for the submission of written briefs.

Mr. St. Sure: Perhaps I had better state my position for the record.

In view of the statement of counsel for the Board, if no further testimony is offered on behalf of the Board, Respondent will rest, offering no testimony, and taking no further action in the hearing, except the making of a motion, or the renewal of the motion, to dismiss, and certain other motions relating to the jurisdiction of the Board and admissibility of the testimony.

If the hearing is resumed for the purpose of taking the additional information indicated by counsel for the Board, those motions referred to will be orally stated and if the hearing does not reconvene, I understand that I may submit those motions in writing and they will be deemed to have been made orally in accordance with the rules of procedure of the Board and may be incorporated into the record as if they had been made orally at the conclusion of the hearing. Of course, [771] the ten day period for the filing of briefs is agreeable.

Mr. Edises: That is all.

Trial Examiner Traynor: We adjourn now until further call by the Examiner.

(Whereupon, at 5:05 o'clock p. m., January 6, 1936, the hearing in the above entitled matter was adjourned subject to further call by the Examiner.)

January 9, 1936.

On authorization of the Trial Examiner the record was opened for the inclusion therein of the following written motion made by the attorney for the respondent.

[Title of Court and Cause.]

MOTION ON BEHALF OF RESPONDENT, SANTA CRUZ FRUIT PACKING COMPANY, MADE UPON THE CONCLUSION OF THE TAKING OF TESTIMONY IN HEARING XX-C-1, TO BE INCLUDED IN THE TRANSCRIPT OF [772] PROCEEDINGS AS HAVING BEEN MADE ORALLY AND IN ACCORDANCE WITH THE RULES AND REGULATIONS PRESCRIBED BY THE NATIONAL LABOR RELATIONS BOARD.

At this time, Respondent, Santa Cruz Fruit Packing Company, respectfully moves for dismissal of the complaint on file herein upon the following grounds, and each of them:

First: That said complaint does not state facts sufficient to constitute a cause of action or basis for complaint;

Second: That the National Labor Relations Board and the Regional Board, and each of them, are without jurisdiction to hear the issues raised by the complaint and answer on file herein, and are without jurisdiction to proceed in the premises;

Third: That the National Labor Relations Act, approved July 5, 1935, violates the terms and provisions of the Constitution of the United States and particularly Section 8 of Article One thereof and the Fifth Amendment thereto, and that said Act is inherently invalid;

Fourth: That the evidence adduced at the hearing herein is sufficient to support all or any of the material allegations contained in said complaint and is insufficient to support any findings in the premises;

Fifth: That the evidence affirmatively establishes that the Respondent is not engaged in interstate or foreign commerce.

For each of the reasons heretofore stated, and as will [773] be set forth with greater particularity in the brief to be filed hereafter, Respondent moves that the Trial Examiner dismiss the said complaint and terminate all proceedings thereunder.

(Signed) DECOTO AND ST. SURE
Attorneys for Respondent.

Trial Examiner Traynor: I reserve decision on the motion.

The Trial Examiner authorized the following stipulation be incorporated in the record:

It is hereby stipulated by and between the National Labor Relations Board and respondent Santa

Cruz Fruit Packing Company that L. H. Ledtke, named as one of the complainants in this case, is by reason of illness unable to testify in the instant case; that said party was employed by the respondent Santa Cruz Fruit Packing Company prior to the 15th day of July, 1935, to do general warehouse work, including the loading of freight cars and trucks with the products of respondent; that he applied for membership in the Weighers Warehousemen and Cereal workers Union, I. L. A., 38-44, on or about July 15, 1935, and was initiated into the organization at the same time as the majority of the other Santa Cruz employes, to-wit, on Wednesday, August 7th, 1935; that his history in connection with the alleged lockout on the morning [774] of August 8, 1935, was substantially the same as testified to by the other men; that he did picket duty for a period of time commencing August 8, 1935; that he desires to have his job back and will accept it if offered to him pursuant to the Board's reinstatement order; that the above stipulation shall be deemed a part of the record in this case and physically copied into the transcript as such.

This stipulation on the part of the respondent Santa Cruz Fruit Packing Company, is not to be deemed a waiver of any objection heretofore made to the admissibility of evidence.

(Whereupon on January 8, 1936, the hearing in the above-entitled matter was closed.) [775]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two volumes, consisting of pleadings before the National Labor Relations Board, proceedings in United States Circuit Court of Appeals for the Ninth Circuit, and transcript of testimony, numbered from and including 1 to and including seven hundred and fifty-nine (759) together with two volumes of exhibits, being Board Exhibits 1 to 33, inclusive, 35, and two books, being Board's Exhibits 34 and 36, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the respondent, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of October, 1937.

[Seal] PAUL P. O'BRIEN,

Clerk.

[fol. 776] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 6, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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CHARLES ELMORE CROPL
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof

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PAGE

Subject Index

Page

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit 1

Opinions Below 2

Jurisdiction 2

Questions Presented 2

Statute Involved 3

Statement 3

Specification of Errors to be Urged 6

Reasons for Granting the Writ 7

1. The questions presented in the instant case are of the utmost public importance and have not yet been passed upon by this Court 7

2. The Circuit Court of Appeals has rendered its decision in a way which probably conflicts with other decisions of this Court 9

3. The Circuit Court of Appeals, in holding that the acts of third persons in declaring petitioner's product "hot cargo" and refusing to handle it, in violation of the award of a Federal arbiter, gave the Board jurisdiction, decided an important question of Federal law not yet determined by this Court 10

Brief for Petitioner 11

Opinions Below 11

Jurisdiction 12

Questions Presented 12

Statute Involved 12

Statement 13

Argument 13

Page

Petitioner is not subject to the Labor Relations Board's jurisdiction because of labor practices concerning employees engaged in labeling, packing, storing and loading petitioner's canned goods 14

The labor practices involved here did not have an effect upon commerce necessary to bring petitioner within the National Labor Relations Board's jurisdiction 29

Conclusion 31

Appendix

National Labor Relations Act, (Wagner-Connery Labor Act) Act of July 5, 1935, c. 372, 49 Stat. 449 i

Table of Cases Cited

Pages

Arkadelphia Milling Co. v. St. Louis Southwest Railways Co., 249 U. S. 134 22

Associated Press v. National Labor Relations Board, 301 U. S. ....., 81 L. Ed. 603, 57 S. Ct. 650 ..... 8, 13, 24

25 California Law Review, pp. 601-603 9

Carter v. Carter Coal Co., 298 U. S. 238, 80 L. Ed. 1160 ..... 5, 9, 22, 29

Coe v. Errol, 116 U. S. 517 18

Constitution, Art. I, sec. 8 7

Gibbons v. Ogden, 9 Wheat. 1, 189, 190 16

Hammer v. Dagenhart, 247 U. S. 251 22

Kidd v. Pearson, 218 U. S. 1 27

National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U. S. ....., 81 L. Ed. 585, 57 S. Ct. 645 ..... 8, 13

National Labor Relations Board v. Fruehauf Trailer Co., 301 U. S. ....., 81 L. Ed. 582, 57 S. Ct. 642 ..... 7, 13

National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U. S. ....., 81 L. Ed. 563, 57 S. Ct. 615 ..... 5, 7, 10, 13, 23

Oliver Iron Mining Company v. Lord, 262 U. S. 172 16

Schechter Poultry Corp. v. United States, 295 U. S. 495, 79 L. Ed. 1570, 55 S. Ct. 837 22

United Leather Workers v. Herkert and Meisel Trunk Co., 265 U. S. 457 22

United Mine Workers v. Coronado Coal Co., 259 U. S. 344 16

Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. ....., 81 L. Ed. 601, 57 S. Ct. 648 ..... 8, 13, 24

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PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. .....

SANTA CRUZ FRUIT PACKING COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Petitioner, Santa Cruz Fruit Packing Company, a corporation, prays that a writ of certiorari issue to review a decree of the United States Circuit Court of Appeals for the Ninth Circuit, entered in the above cause on July 31, 1937 (R. 138), granting a petition by the National Labor Relations Board for the enforcement of its order against Santa Cruz Fruit Packing Company.

OPINIONS BELOW

The findings of fact and order of the National Labor Relations Board (R. 55-83), and the opinions of the Circuit Court of Appeals (R. 104-137), have not yet been reported.

JURISDICTION

The decree of the Circuit Court of Appeals for the Ninth Circuit was entered on July 31, 1937 (R. 138-141). The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, and section 10(e) of the National Labor Relations Act (49 Stat. 449).

QUESTIONS PRESENTED

1. Whether petitioner was subject to the jurisdiction of the National Labor Relations Board because of labor practices affecting its employees engaged in labeling, packing, storing and loading canned goods.

2. Whether certain labor practices committed by petitioner had, or tended to have, any effect upon interstate and foreign commerce within the meaning of sections 2 and 10(e) of the National Labor Relations Act (49 Stat. 449) so as to bring petitioner within the jurisdiction of the National Labor Relations Board.

STATUTE INVOLVED

The National Labor Relations Act (49 Stat. 449) is printed as an appendix hereto, and the Court is respectfully referred to it.

STATEMENT

On September 27, 1935, a charge was filed against petitioner with the National Labor Relations Board for the Twentieth Region on behalf of Weighers, Warehousemen and Cereal Workers, Local, 38-44, International Longshoremen's Association (R. 1). A complaint and notice of hearing were issued by the Regional Director on November 2, 1935 (R. 5, 13), and the Board designated a Trial Examiner (R. 14). Petitioner filed an answer to the complaint on November 8, 1935 (R. 14). An amended complaint (R. 20) and new notice of hearing were filed November 14, 1935. The amended complaint charged petitioner with the commission of certain unfair labor practices affecting commerce, under section 8, subdivisions (1) and (3) and section 2, subdivisions (6) and (7) of the National Labor Relations Act (49 Stat. 449).

The answer was stipulated to serve as an answer to the amended complaint (R. 32). A hearing was had before a Trial Examiner commencing on December 23rd and running, with continuances, to January 6, 1936 (R. 32). Petitioner moved to dismiss upon the grounds of unconstitutionality of the Act and lack of jurisdiction, and the motions were denied (R. 33).

Following the hearing the motions were renewed and were subsequently denied (R. 33). An intermediate report and conclusions were filed by the Examiner on January 30, 1936, and petitioner thereupon excepted (R. 48). Decision, findings of fact, conclusions of law and an order by the Board followed on April 2, 1936 (R. 55-84).

On January 12, 1937, pursuant to an application for leave, the Board petitioned the Circuit Court of Appeals for the Ninth Circuit for an order enforcing its order (R. 93), and on July 31, 1937, the Court granted the Board's application and made its decree (R. 138).

The following facts may be summarized from the Board's findings:

Petitioner, Santa Cruz Fruit Packing Company, is a California corporation, one of the four or five largest of its kind in the State, operating two canneries in California, where it is engaged in canning, packing, warehousing and shipping fruits and vegetables (R. 60). Petitioner's 1935 pack, including a small carryover, was 1,699,270 cases. Thirty-nine per cent of this was sold to customers in foreign countries and other states under F.O.B. and C.I.F. San Francisco Bay point contracts (R. 61). None of petitioner's supplies came from interstate sources, and it operates no plant out of California. In the summer of 1935 certain warehouse employees joined the union which later filed the charge against petitioner, and the labor practices ensued which are here involved. Since petitioner does not challenge the Board's findings as to

these practices, they will not be discussed further. The only issues raised here go to the Board's jurisdiction.

The warehousemen were engaged in performing various duties at the cannery; they labeled cans, they packed them in cartons, stored them in the warehouse portion of the cannery, and helped load trucks or freight cars, some of which had destinations out of California (R. 152-153). As a result of the labor practices, picket lines were established at the cannery; the goods were declared "hot cargo" and other unions refused to handle them. This refusal was a violation of the award made in October, 1934, by Judge Sloss acting as Federal arbiter following the San Francisco maritime strike of that year (R. 196-197), and was participated in by persons not involved in the labor practices.

On the basis of these facts the Board made its order, and the Circuit Court of Appeals for the Ninth Circuit, upon petition of the respondent Board, made a decree enforcing the order of the Board against petitioner (R. 138). The Circuit Court of Appeals, upon the transcript of the proceedings before the Board, held that Article I, section 8 of the Constitution conferred upon Congress the power to regulate petitioner's labor relations with respect to all employees engaged in production, upon the authority of *National Labor Relations Board v. Jones & Laughlin Steel Co.*, 301 U. S. ....., 81 L. Ed. 563, and upon the further proposition that the *Jones & Laughlin* case overruled the decision of this Court in *Carter v. Carter Coal Co.*,

298 U. S. 238, 80 L. Ed. 1160 (R. 108-111). Judge Denman, in his opinion, stated that the *Carter* case was identical with petitioner's (R. 109). The opinion further holds that the congressional power exists where only thirty-nine per cent of the product ultimately entered interstate commerce and all raw materials were produced within the state (R. 116). Upon these two propositions petitioner was held to be subject to the National Labor Relations Act.

Judge Haney filed a concurring opinion in which he held that the Board would have had jurisdiction over petitioner if only one per cent of its product had ultimately gone into interstate commerce (R. 120-121).

Judge Wilbur dissented upon the ground that there was not a sufficient portion of petitioner's product in interstate commerce to confer jurisdiction upon the respondent Board (R. 121-137).

The decree upon petition for enforcement of the Board's order was entered July 31, 1937 (R. 141).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that petitioner was subject to the jurisdiction of the National Labor Relations Board because of its labor relations with certain production employees.

2. In holding that the unfair labor practices which were found to have been committed by petitioner af-

fected, or tended to affect, commerce within the meaning of section 2 of the National Labor Relations Act.

REASONS FOR GRANTING THE WRIT

1. The questions presented in the instant case are of the utmost public importance and have not yet been passed upon by this Court.

The Circuit Court of Appeals held that petitioner, as to its production employees, was subject to the National Labor Relations Board's jurisdiction, upon the ground that unfair labor practices affected commerce. Only thirty-nine per cent of petitioner's product and none of its supplies touched channels of interstate commerce. The National Labor Relations Act is an attempt by Congress to regulate a phase of a relationship which until 1935 had, generally speaking, been left without legislative control. Under this Act the jurisdiction of the National Labor Relations Board is determined by the application of the Commerce clause (*Constitution,* Art. I, sec. 8) to an employer's business. If the business affects interstate commerce, the National Labor Relations Act may be applied to his labor relations; otherwise, these relations must be governed by whatever state regulations may exist.

In five decisions of this Court the applicability of the National Labor Relations Act to production employees has been passed upon. (*National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 301 U. S. ....., 81 L. Ed. 563, 57 S. Ct. 615; *National Labor Relations Board v. Fruehauf Trailer Co.,* 301

U. S. ....., 81 L. Ed. 582, 57 S. Ct. 642; *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. ....., 81 L. Ed. 585, 57 S. Ct. 645; *Associated Press v. National Labor Relations Board*, 301 U. S. ....., 81 L. Ed. 603, 57 S. Ct. 650; *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, decided April 12, 1937, 301 U. S. ....., 81 L. Ed. 601, 57 S. Ct. 648.) In each of these decisions the Court has found that the constitutional requirements necessary to confer jurisdiction upon the Board existed, but there was in each of them a dominance of interstate activity which is lacking in the case at bar. In this respect petitioner believes that it speaks for a large percentage, if not a majority, of the substantial businesses and industries of the country—its organization is upon a purely local basis without regard to the ultimate destination of the product, and intrastate activity is the dominant characteristic. Within this group fall a large number of western canneries, employing thousands of persons and having a yearly production of millions of dollars. No decision has been rendered by this Court upon the applicability of the Act to such production employees. The desirability of removing uncertainty as to the status of such employees is clear, from the standpoint of both employer and employee and the National Labor Relations Board itself.

Several writers have expressed doubt as to the status of industries such as petitioner's under the Act. Professor Magruder, in 50 Harvard Law Review, at pp. 1095-1096, says:

> "At the other end of the line, consider a big retail business, a department store, for example,

that obtains most of its merchandise from out of the state, and sells it locally, in the main, though conducting perhaps a small mail order business. A general strike by the clerks of the department stores of any large city might well dam up the flow of an important volume of interstate commerce. The case is doubtful. The Court recognizes that 'the question is necessarily one of degree'. A stronger case for federal regulation would be a big chain store system.

"There is much room for speculation. The Court has shown that it will pay attention to relevant economic data, which the board makes a part of its administrative record, showing that particular activities have a practical and substantial effect upon interstate commerce. However, the Court has warned that the argument must not become so fine spun as effectually to obliterate the distinction between what is national and what is local 'and create a completely centralized government'. A strike in the barber shops might interrupt the flow of hair tonic in interstate commerce. But the Board need not concern itself with subtle arguments for an extension of its jurisdiction."

See, also,

25 *California Law Review,* pp. 601-603.

2. The Circuit Court of Appeals has rendered its decision in a way which probably conflicts with other decisions of this Court.

Judge Denman and Judge Haney base their opinions upon the express proposition that the decision of this Court in *Carter v. Carter Coal Co.,* 298 U. S. 238, 80 L. Ed. 1160 (which they concede would otherwise be

controlling) was impliedly overruled by the decision in *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 301 U. S. ....., 81 L. Ed. 563, 57 S. Ct. 615.

3. The Circuit Court of Appeals, in holding that the acts of third persons in declaring petitioner's product "hot cargo" and refusing to handle it, in violation of the award of a Federal arbiter, gave the Board jurisdiction, decided an important question of Federal law not yet determined by this Court.

Petitioner believes that Congress did not intend to subject employers to the penalties provided by the Act, where the only effect of labor practices upon interstate commerce is brought about by the wrongful interference of third persons (R. 196-197).

For these reasons it is respectfully submitted that this petition should be granted.

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. .....

SANTA CRUZ FRUIT PACKING COMPANY, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF FOR PETITIONER

OPINIONS BELOW

A decision (R. 55) was rendered by the Board, which included findings of fact (R. 60), conclusions of law (R. 79) and an order (R. 80). This was rendered on April 2, 1936.

In the Circuit Court of Appeals (Circuit Judges Wilbur, Denman and Haney) an opinion was written by Judge Denman and filed on July 31, 1937. It appears on page 104 of the record. A concurring opinion was filed on the same day by Judge Haney. It appears on page 117 of the record. A dissenting opinion was filed on the same day by Judge Wilbur. It appears on page 121 of the record.

JURISDICTION

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. §347), pursuant to the authority of section 10(e) of the National Labor Relations Act (49 Stat. 449). The judgment of the Circuit Court of Appeals was entered on July 31, 1937. A rehearing was not requested.

QUESTIONS PRESENTED

1. Whether petitioner is subject to the jurisdiction of the National Labor Relations Board because of labor practices affecting employees engaged in labeling, packing, storing and loading petitioner's canned goods.

2. Whether certain labor practices of petitioner had, or tended to have, an effect upon interstate and foreign commerce within the meaning of sections 2 and 10(e) of the National Labor Relations Act (49 Stat. 449) so as to bring petitioner within the jurisdiction of the National Labor Relations Board.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449; U. S. C. Sup. I, Title 29, Sec. 151 et seq.) is printed as an appendix hereto, and the Court is respectfully referred to it.

STATEMENT

The facts are stated in the petition, pages 3 to 6. Petitioner desires to emphasize the fact that all of its raw materials and supplies were derived from intrastate sources, and that of all its product, only about thirty-nine per cent found its way into interstate or foreign commerce. All of this thirty-nine per cent was sold under F.O.B. or C.I.F. San Francisco Bay point contracts. Petitioner further emphasizes that the effect upon shipments through branding its goods as "hot cargo" and the consequent refusal of other unions to handle them was the result of the acts of third persons in violation of an award of a Federal arbiter. There was no stoppage of normal operations at the cannery of petitioner.

ARGUMENT

Following the recent decision of this Court in *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* decided April 12, 1937 (301 U. S. ....., 81 L. Ed. 563, 57 S. Ct. 615) and companion cases (*National Labor Relations Board v. Friedman-Harry Marks Clothing Company,* 301 U. S. ....., 81 L. Ed. 585, 57 S. Ct. 645; *National Labor Relations Board v. Fruehauf Trailer Company,* 301 U. S. ....., 81 L. Ed. 582, 57 S. Ct. 642; *Washington, Virginia & Maryland Coach Company v. National Labor Relations Board,* 301 U. S. ....., 81 L. Ed. 601, 57 S. Ct. 648; *Associated Press v. National Labor Relations Board,* 301 U. S. ....., 81 L. Ed. 603, 57 S. Ct. 650, all decided April 12,

1937) the validity of the National Labor Relations Act as an exercise of congressional power over interstate commerce is not disputed. The Act, however, is a departure from the traditional fields of Federal regulation, and to the extent that it is applied to spheres hitherto not affected by control of the national government, questions of constitutional interpretation of the utmost importance are raised. As petitioner has already stated, in all the situations presented to this Court under the Act the interstate features of the industries were the dominant characteristic. But in the case at bar, the Board seeks to control an employer's relationship with production employees where the interstate feature touches only a small arc on the circumference of petitioner's business, and where the great preponderance is upon the side of intrastate or local organization.

The validity of the Board's extension of its authority to an industry so predominantly local, then, will be the chief subject of discussion in this brief. The only other question raised by petitioner concerns the interpretation of the Act itself, as to the nature of the consequences of labor practices upon commerce which will suffice to invoke the Federal authority.

Petitioner is not subject to the Labor Relations Board's jurisdiction because of labor practices concerning employees engaged in labeling, packing, storing and loading petitioner's canned goods.

Under the National Labor Relations Act the Board may assume jurisdiction only in those cases where Congress itself can act under the power to "regulate

commerce with foreign nations, and among the several states, and with the Indian tribes." (Constitution, Art. I, sec. 8.) The Act itself does not purport to confer jurisdiction upon the Board in terms any broader than the constitutional grant; control is restricted to questions and practices "affecting commerce".

It is extremely difficult in present day conditions to interpret a constitutional provision in the way in which it was intended by its framers, yet this is the task which must be performed if the Federal government is to be kept within the limitations imposed by the states. Our unique system of dual sovereignty is but one result of the jealousness of the states to maintain their independence, not only of foreign nations, but of one another. This attitude found its culmination in the Tenth Amendment—the states, not satisfied with the implied protections against a Federal encroachment, insisted upon a clear cut, black and white declaration. If a less individualistic philosophy of government is to be invoked, the authority for the change must come from the same source that imposed the restrictions in favor of the states. The constitutional pattern must be examined through the same glass under which it was designed.

In the stage of industrial development of 1787 it was undoubtedly taken for granted that manufacturing and production were matters of local concern. This Court has upon numerous occasions sustained the powers of the states as to such matters; the sphere of Federal influence has been restricted to commerce

in its traditional sense, which connotes intercourse. See *Gibbons v. Ogden,* 9 Wheat. 1, 189, 190.

An illustrative decision is the oft-cited case of *United Mine Workers v. Coronado Coal Co.,* 259 U. S. 344. Concerning interference with the mining of coal, this Court said (at p. 407):

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In *Hammer v. Dagenhart,* 247 U. S. 251, 272, 62 L. Ed. 1101, 1106, 3 A. L. R. 649, 38 Sup. Ct. Rep. 529, Ann. Cas. 1918E, 724, we said: 'The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof. *Delaware, L. & W. R. Co. v. Yurkonis,* 238 U. S. 439, 59 L. Ed. 1397, 35 Sup. Ct. Rep. 902.' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce."

Another case reaching a similar conclusion as to a production activity is *Oliver Iron Mining Company v. Lord,* 262 U. S. 172, wherein the Court discussed the validity of a Minnesota tax upon mining. The facts of the case will appear from the following quotation:

> "The chief contention is that mining, as conducted by the plaintiffs, if not actually a part of interstate commerce, is so closely connected therewith that to tax it is to burden or interfere with such commerce, which a State cannot do consist-

ently with the commerce clause of the Constitution of the United States.

"The facts on which the contention rests are as follows: The demand or market within the state for iron ore covers only a negligible percentage of what is mined by the plaintiffs. Practically all of their output is mined to fill existing contracts with consumers outside the state and passes at once into the channels of interstate commerce. Three-fourths of it is from open-pit mines and one-fourth from underground mines. At the open-pit mines empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs dig the ore, bring it to the surface through shafts, and put it in elevated pockets where it readily can be loaded into cars. The subsequent movements are much the same as at the open-pit mines, but their continuity is not so pronounced. Some of the ore from both kinds of mines—between 10 and 20 per cent—is concentrated by washing or beneficiated after coming out of the mine and before starting out of the state; but our conclusion respecting the usual operations renders this deflection immaterial.

"Plainly the facts do not support the contention. Mining is not interstate commerce, but, like manufacturing, is a local business, subject to local regulation and taxation. (Citing numerous cases.) Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce. (Citing numerous cases.)

"The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference." (262 U. S. at 177.)

And again, in *Coe v. Errol,* 116 U. S. 517, this Court laid down principles concerning production activities and interstate commerce which seem almost anticipatory of the case at bar. The town of Errol, New Hampshire, had imposed a general property tax upon certain logs which had been cut in New Hampshire. These logs were at the time in question being floated down the river to Lewiston, Maine, and were temporarily detained in the town of Errol, New Hampshire, on tax day by low water. The question which the Supreme Court had to decide was whether or not the logs which were then in New Hampshire, were subject to a general property tax of that state in the same manner as other property, even though the logs were intended for export. The court held that the

commerce clause did not prevent the state from levying such a tax. It stated that the logs, having been cut in New Hampshire, would be under the protection of the commerce clause as soon as they were put in the course of commercial transportation, by being delivered to a carrier for such purpose:

> "There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving an an *entrepot* for that particular region, whether on a river or a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that state, subject to its jurisdiction and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State."
>
> * * * * * * *
>
> "Although intended for exportation, they may never be exported; the owner has a perfect right

> to change his mind; and until actually put in motion, for some place out of the State, or committed to the custody of a carrier for transportation to such place, why may they not be regarded as still remaining a part of the general mass of property in the State? If assessed in an exceptional time or manner, because of their anticipated departure, they might well be considered as taxed by reason of their exportation or intended exportation; but if assessed in the usual way, when not under motion or shipment, we do not see why the assessment may not be valid and binding." (116 U. S. 525, 526.)

The Court then recognized the difficulty of fixing a definite time for the commencement of interstate commerce, but stated general rules and gave examples which are in point here:

> "The point of time when state jurisdiction over the commodities of commerce begins and ends is not an easy matter to designate or define; and yet it is highly important, both to the shipper and to the State, that it should be clearly defined so as to avoid all ambiguity or question." (116 U. S. 526.)
>
> * * * * * * *
>
> "But no definite rule has been adopted with regard to the point of time at which the taxing power of the State ceases as to goods exported to a foreign country or to another State. What we have already said, however, in relation to the products of a State intended for exportation to another State will indicate the view which seems to us the sound one on that subject, namely: that such goods do not cease to be part of the general mass of property in the State, subject, as such to

its jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to another State or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject. It seems to us untenable to hold that a crop or a herd is exempt from taxation merely because it is, by its owner, intended for exportation. If such were the rule, in many States there would be nothing but the lands and real estate to bear the taxes. Some of the western States produce very little, except wheat and corn, most of which is intended for export; and so of cotton in the southern States. Certainly, as long as these products are on the lands which produce them, they are part of the general property of the State. And so we think they continue to be until they have entered upon their final journey for leaving the State and going into another State. It is true, it was said in the case of *The Daniel Ball*, 10 Wall. 565 (77 U. S. bk. 19, L. ed. 1002): 'Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.'. But this movement does not begin until the articles have been shipped or started for transportation from one State to the other. *The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation.* Until actually launched on its way to another State, or com-

> mitted to a common carrier for transportation to such State, its destination is not fixed and certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State. *Carrying it from the farm or the forest to the depot is only an interior movement of the property, entirely within the State, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the State its exportation is a matter altogether in fieri, and not at all a fixed and certain thing.*" (116 U. S. 528; italics ours.)

Other familiar decisions in the same vein are the following:

Arkadelphia Milling Co. v. St. Louis Southwestern Railway Co., 249 U. S. 134;

United Leather Workers v. Herkert and Meisel Trunk Co., 265 U. S. 457;

Hammer v. Dagenhart, 247 U. S. 251;

Schechter Poultry Corp. v. United States, 295 U. S. 495, 79 L. Ed. 1570, 55 S. Ct. 837;

Carter v. Carter Coal Company, 298 U. S. 238, 80 L. Ed. 1160.

Because of the fact that production activities are considered traditionally as being intrastate in character, it might be thought at first blush that they were entirely removed from Federal control. But in exceptional circumstances this Court has recognized their intimate connection with interstate commerce and has upheld congressional dominion. With the increasing

complexity and magnitude of modern industrial organization this result may prove to be the rule rather than the exception.

When industries establish themselves upon a national basis with their trade covering a wide network of interstate channels, they may properly be considered as subjecting their production activities to a federal jurisdiction and control. The framers would no doubt have desired a control over a nationwide organization commensurate with its scope of operations.

But petitioner urges that as to a business which is predominantly local, the constitutional founders would have insisted upon state control, and the Tenth Amendment was but the expression of their desire to preserve for the states the authority over such affairs.

The Wagner Act decisions (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S....., 81 L. Ed. 563, 57 S. Ct. 615, and its companion cases) fully support this view. In the *Jones & Laughlin* case the corporation was organized in Pennsylvania to manufacture iron and steel; it owned subsidiary companies which gave it an integrated industry comprised of ore mines in Michigan and Minnesota, steamships upon the Great Lakes, coal mines in Pennsylvania, limestone properties in Pennsylvania and West Virginia, two railroads, warehouses in four states, fabricating shops in New York and Louisiana, sales offices in twenty cities in this country, a Canadian distribution agency; and seventy-five per cent of the product left Pennsylvania.

In the *Fruehauf* case (81 L. Ed. 582), the company operated in Michigan the largest trailer concern in the country. It had sales offices in twelve states, and a subsidiary operated a Canadian assembly plant and sales office. Over half the materials (in value) were received from other states, and eighty per cent of the product was sold out of Michigan.

In the *Friedman* case (81 L. Ed. 585) the company manufactured men's clothing in Richmond, Virginia. Of its principal materials (woolen and worsted goods), 99.57 per cent came from other states, and of the finished garments, 82.8 per cent were sold to out-of-state customers. A sales office was maintained in New York City, where 15 or 20 per cent of total sales were made.

In the *Washington, Virginia and Maryland Coach Company* case (81 L. Ed. 601) the company was admittedly an instrumentality of interstate commerce, being engaged in interstate transportation for hire.

In the *Associated Press* case (81 L. Ed. 603) the Press maintained offices scattered throughout the country for the collection and dissemination of news to its members for a profit to them.

Petitioner believes that the key to the problem is in the following quotation from the *Jones & Laughlin* decision (81 L. Ed. at page 575):

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from

> burdens and obstructions, Congress cannot be denied the power to exercise that control. *A. L. A. Schechter Poultry Corp. v. United States*, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. *The question is necessarily one of degree.*" (Italics ours.)

It will be noted that in the *Jones & Laughlin, Fruehauf* and *Friedman* cases there was a predominance of interstate features, not only as to purchases and sales of supplies and materials, but of the pattern of the industrial organization as well. In the case at bar, on the other hand, the purchases of supplies were entirely local and less than two-fifths of the product ultimately entered interstate commerce. Nor is petitioner organized on a plan extending its scope of operations beyond the State of California. The only place where it touches interstate channels is upon the sale of a small part of its product, by F. O. B. and C. I. F. contracts, under which petitioner loses all concern over this portion before it leaves the San Francisco Bay area. The employees handling this part of the product spend the greater part of their time and labor on goods consigned for intrastate trade, and no attempt to separate the local from the interstate is made until the warehouse operations involved here are concluded.

A very real danger lies in the application of the National Labor Relations Act to the case at bar. Although no statistics are available, it is obvious that a large portion, if not a majority, of the production industry of this nation is organized and functions on the same plan as petitioner's. Its plants are confined within a single state, and its commerce is essentially local in character. Only a minor (though probably substantial) part of it touches the interstate stream. Judge Wilbur recognized the threat to state sovereignty in the extension of Federal authority over such industries when he said (R. 125):

> "As the cases decided by the Supreme Court are not directly applicable because the facts differ, we turn to the reasoning by which the majority of the Supreme Court reached its conclusion to see if such reasoning is applicable or decisive herein.
>
> "Taken broadly the logic of this reasoning would justify the conclusion of my associates, but the majority of the Justices of the Supreme Court, as well as the minority, foresaw the danger that the opinion, pressed to its logical conclusion, might result in leaving to the sovereign states only the empty hull of government and admonished that in applying these decisions we must not only consider as a factor in the problem the direct effect upon interstate commerce of the collective bargaining system, but must also consider as a factor the authority of the state over its domestic concerns expressly and impliedly reserved by and to them by the Constitution."

Judge Wilbur then referred to the part of the *Jones & Laughlin* opinion above quoted (supra, p. 24).

This Court, realizing the dangers in a too generous application of the commerce clause, has often protected the purpose of the Tenth Amendment by curbing an over-reaching Federal control. The following from *Kidd v. Pearson*, 128 U. S. 1, 21, is illustrative:

> "If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. *The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry.* . . . The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their successful management." (Italics ours.)

Obviously, the line of demarcation between that which is Federal and that which is reserved to the states must be drawn somewhere. Petitioner believes that where production activities are concerned, the control should rest with the sovereign which is most concerned with them. If the interstate character is dominant, congressional authority should be applied;

if local features prevail, the states should be free to act. To hold otherwise is to whittle the state sovereignty away almost completely, and to yield before the dangers which the Tenth Amendment was expressly intended to forestall. To quote again from Judge Wilbur (R. 129-130):

> "In considering the relative rights of the state and federal governments it should be remembered that after the Revolution full sovereignty was vested in each of the original states subject to minor control by Congress under the Articles of Confederation and that the Federal government now has only such powers as were then granted to it by the states in the Constitution of 1787, and such as were granted by the amendments thereto. This, although historically clear, was made definite by the Tenth Amendment to the Constitution ratified in 1791 expressly reserving to the states, and to the people, all powers not given to the United States. Is it to be believed that full power would have been given to Congress over interstate and foreign commerce if it had been thought by those who formed the Constitution in 1787 and consented to its adoption at that time, that lying dormant within this general grant of power was a power to control practically every activity in a state if a small percentage of the product of this activity entered interstate or foreign commerce? The historical answer is clearly that such a provision so construed would not have been adopted."

If a line of limitation is to be drawn, it should be no more difficult to place it down the middle than at either end. The test of which is the dominant aspect

can, if anything, be applied easier than that of a small fractional amount as suggested in Judge Haney's opinion where he states that one per cent would satisfy the requirement (R. 121).

Petitioner believes that this case is controlled by the decision in *Carter v. Carter Coal Co.*, 298 U. S. 238, 80 L. Ed. 1160. This Court, in the *Jones & Laughlin* decision (81 L. Ed. 577), held that the *Carter* case was not controlling, but the opinions in the Circuit Court of Appeals in this proceeding expressly state that the *Carter* case is now overruled by the *Jones & Laughlin* decision (R. 108, 117).

The labor practices involved here did not have an effect upon commerce necessary to bring petitioner within the National Labor Relations Board's jurisdiction.

This question, if standing alone, might not be sufficient to support the petition herein, but it is one upon which petitioner believes the Circuit Court of Appeals erred, and is of great importance in the future application of the Act. It is a matter upon which no court has passed other than in this proceeding.

The testimony before the Board showed that the labor practices here involved had only an indirect repercussion upon interstate commerce in that petitioner's product was declared "hot" and members of certain other local unions refused to handle it (R. 196-197). Judge Denman recognized this in his opinion (R. 106, 107):

> *"The product of the plant was declared 'hot' and other locals of unions—teamsters, dock clerks, scalers, seamen, and longshoremen—failed or re-*

fused to handle it. Blacklisting of respondent's products was attempted." (Italics ours.)

"We hold that so far as concerns the manufacture and shipping activities of the respondent and its employees at the Oakland plant, the labor dispute leading to the discharge of the employees, the *declaration of the products as 'hot', and the sympathetic refusal of other unions to handle them, 'throttled' the flow of interstate commerce* and 'put in jeopardy' its future flow, to the extent of thirty-nine per cent of respondent's products manufactured to be shipped into that commerce."

However, the testimony further shows that this refusal to handle the "hot cargo" was in direct violation of an award made in October, 1934, by Judge Sloss acting as Federal arbiter in the San Francisco maritime strike of that year (R. 196-197). The so-called interference with interstate commerce was the intentional act of independent third persons, and it was wrongful in that it violated the award of a Federal arbiter.

The opinion of the Circuit Court of Appeals in holding that such acts constituted an effect upon interstate commerce raises serious questions as to the scope of the National Labor Relations Act which have not received other judicial consideration. If the Circuit Court of Appeals is correct in its ruling, it would follow that the threat of criminal action by third persons, such as arson or other destruction of property, would subject an employer to the Board's jurisdiction if such acts involved interstate or foreign commerce. Petitioner believes that the National Labor

Relations Act was intended to, and can only, be applied where the labor practice of an employer is one which in the ordinary course of labor activities would lead the employer to anticipate an interference with interstate commerce. An employer should not be required to expect that wrongful acts of persons with whom he has no dispute will tend to affect commerce.

CONCLUSION

It is therefore respectfully submitted that because of the great number of employers to whom the principles of this case will be applied, and because of the uncertainty which will follow in the absence of a pronouncement from this Court, the petition for writ of certiorari should be granted and the decree of the Circuit Court of Appeals reversed with instructions to deny the Board's application for enforcement of its order.

Respectfully submitted,

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Appendix

NATIONAL LABOR RELATIONS ACT

WAGNER-CONNERY LABOR ACT

Act of July 5, 1935, c. 372, 49 Stat. 449.

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Findings and policy.—Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market

for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of

their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions. Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 113 approved June 14, 1935.

National Labor Relations Board. Sec. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the

powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Organization and administration. Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize

the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

Inquiries. Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate,

prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Rules and regulations. Sec. 6 (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

Rights of employees. Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Unfair labor practices. Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a) an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

Representatives and elections. Sec. 9. (a) Representatives, designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall

have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the plead-

ings, testimony, and proceedings set forth in such transcript.

Prevention of unfair labor practices. Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which ap-

plication may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the

hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the

proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

Investigatory powers. Sec. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts busi-

ness, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed or afore-

said shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Penalty for resistance to Board's orders. Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Right to strike affirmed. Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Application of previous laws. Sec. 14. Wherever the application of the provisions of section 7(a) of the

National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707(a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: Provided, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Separability clause. Sec. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Title of Act. Sec. 16. This Act may be cited as the "National Labor Relations Act." *Approved July 5, 1935.*

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

J. PAUL ST. SURE,
[illegible],
Attorney for Petitioner.

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PAGE

Index

Page

Reference to Reports of Official Opinions in the Case 1

Statement On Basis of Jurisdiction 2

Statement of Evidence in the Case 8

Assignments of Error 10

Summary of Argument 11

Argument 17

Point I. The facts of the instant case distinguish it from the Labor Board cases (National Labor Relations Board v. Jones Laughlin Steel Corporation and companion cases) 17

Point II. There can be no such thing as burdening or obstrucing a commerce which has not begun, and where there is no antecedent movement in commerce of the raw materials, manufacture or processing of such materials are not commerce but are distinct therefrom, and the National Labor Relations Act does not apply to the labor disputes arising out of such manufacture and processing 21

Point III. The canning by petitioner of a small quantity of hominy imported from other states has no direct effect on interstate commerce 30

Point IV. The power of Congress to regulate labor disputes in a local industry cannot be made to depend on the intention of the producer to sell the product in interstate commerce, or the uncertain circumstance of whether he may so sell all or any part of such product 32

Point V. The designation of petitioner's product as "hot cargo" and the refusal to handle such product by other unions was an unlawful conspiracy and cannot be a basis for extending the powers of Congress over petitioner's local labor relations 38

Page

Point VI. The instant case is in no way comparable to the cases wherein this Court has upheld the right of Congress to regulate intrastate affairs because of their direct effects upon interstate commerce 41

Conclusion 48

Table of Authorities Cited

Pages

Addyston Pipe and Steel Company v. United States, 175 U. S. 211; 44 L. Ed. 136 ..... 16, 47

Anderson v. Ship Owners Assn., 272 U. S. 359; 71 L. Ed. 298 ..... 15, 39

Arkadelphia Milling Co. v. St. Louis S. W. R. Co., 249 U. S. 134; 63 L. Ed. 517 ..... 14, 34

Associated Press, The, v. National Labor Relations Board, 301 U. S. 103; 81 L. Ed. 953 ..... 8, 12

Atlantic Coast Line R. Co. v. Standard Oil Co., 275 U. S. 257; 72 L. Ed. 270 13

Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612; 55 L. Ed. 878 ..... 16, 46

Bedford Cut Stone Company v. Journeymen S. C. Assn., 274 U. S. 37; 71 L. Ed. 916 ..... 15, 39, 40

Board of Trade v. Olsen, 262 U. S. 1; 67 L. Ed. 839 ..... 16, 44

Brown v. Maryland, 12 Wheat. 419; 6 L. Ed. 678 43

Carter v. Carter Coal Company, 298 U. S. 238; 80 L. Ed. 1160 ..... 12, 14, 23, 24, 34, 37, 41

Champlin Refining Co. v. Corporation Commission, 286 U. S. 210; 76 L. Ed. 1062 ..... 14, 33

Chassaniol v. Greenwood, 291 U. S. 584; 78 L. Ed. 1004 ..... 13, 14, 26, 34

Coe v. Errol, 116 U. S. 517; 29 L. Ed. 715 ..... 12, 26

Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295; 69 L. Ed. 963 ..... 15, 36, 39

Duplex Printing Press Company v. Deering, 254 U. S. 443; 65 L. Ed. 349 ..... 15, 39

East Ohio Gas Co. v. Tax Commission of Ohio, 283 U. S. 465; 75 L. Ed. 1171 ..... 13, 27, 31

Federal Compress and Warehouse Co. v. McLean, 291 U. S. 17; 78 L. Ed. 622 ..... 14, 33

Florida v. United States, 282 U. S. 194; 75 L. Ed. 291 ..... 15, 42

Pages

Heisler v. Thomas Colliery Company, 260 U. S. 245; 67 L. Ed. 237 ..... 13, 14, 27, 34, 36
Hill v. Wallace, 259 U. S. 44; 66 L. Ed. 822 ..... 16, 44
Houston E. & W. T. R. Co. v. United States, 234 U. S. 342; 58 L. Ed. 1341 ..... 15, 39, 42, 43

Industrial Association of San Francisco v. United States, 268 U. S. 64; 69 L. Ed. 849 ..... 13, 31

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346 ..... 13, 14, 26, 32, 36

Lehigh Valley R. Co. v. Commonwealth of Pennsylvania, 145 U. S. 192; 36 L. Ed. 672 ..... 13, 22, 25
Local 167 I. B. T. v. United States, 291 U. S. 293; 78 L. Ed. 804 ..... 15, 39
Lowe v. Lawlor, 208 U. S. 274; 52 L. Ed. 488 ..... 15, 39

McCall v. People of the State of California, 136 U. S. 104; 34 L. Ed. 391 43
Mondou v. New York, N. H. & H. R. Co., (Second Employers' Liability Cases), 223 U. S. 1; 56 L. Ed. 327 ..... 16, 46

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., 301 U. S. 1-103; 81 L. Ed. 893 ..... 8, 12, 18
National Labor Relations Board v. Fruehauf Trailer Co., 301 U. S. 1; 81 L. Ed. 893 ..... 8, 12, 18, 20, 44
National Labor Relations Board v. Jones Laughlin Steel Corporation, 301 U. S. 1; 81 L. Ed. 893 ..... 8, 12, 17, 19, 44
National Labor Relations Board v. Santa Cruz Fruit Packing Company, 1 N. L. R. B. 454 ..... 1, 7

Oliver Mining Company v. Lord, 262 U. S. 172; 67 L. Ed. 929 ..... 13, 14, 26, 34

Public Utilities Commission v. Landon, 249 U. S. 236; 63 L. Ed. 577 ..... 13, 31

Railroad Commission v. Chicago B. & Q. R. Co., 257 U. S. 563; 66 L. Ed. 371 ..... 15, 42, 43

Pages

Santa Cruz Fruit Packing Company v. National Labor Relations Board, 91 Fed.(2d) 790 ..... 1, 8, 24
A. L. A. Schecter Poultry Corp. v. United States, 295 U. S. 495; 79 L. Ed. 1570 ..... 12, 13, 19, 23, 30
Simpson v. Shephard, 230 U. S. 352; 57 L. Ed. 1511 36
Southern R. Co. v. United States, 222 U. S. 20; 56 L. Ed. 72 ..... 16, 45
Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735 ..... 16, 44
Standard Oil Co. of N. J. v. United States, 221 U. S. 1; 55 L. Ed. 619 ..... 16, 47
Swift and Company v. United States, 196 U. S. 375; 49 L. Ed. 518 ..... 16, 44

Tagg Bros. & Moorehead v. United States, 280 U. S. 420; 74 L. Ed. 524 ..... 16, 45
Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548; 74 L. Ed. 1034 ..... 16, 46

United Leather Workers International Union v. Herkert & M. Trunk Company, 265 U. S. 457; 68 L. Ed. 1104 32
United States v. American Tobacco Company, 221 U. S. 106; 55 L. Ed. 663 ..... 16, 47
Utah Power & Light Company v. Pfost, 286 U. S. 165; 76 L. Ed. 1038 ..... 13, 27, 28

Veazie v. Moor, 14 How. 568; 14 L. Ed. 545 ..... 12, 25
Virginia R. Co. v. System Federation No. 40, 300 U. S. 515; 81 L. Ed. 789 ..... 16, 46

Washington, Virginia & Maryland Coach Company v. National Labor Relations Board, 301 U. S. 142; 81 L. Ed. 965 ..... 8, 12

STATUTES CITED

Pages

Constitution of the United States, Art. I, Section 8(3) 11

General Rules of the Supreme Court, Rule 12 2

Judicial Code, Section 240a (U. S. C. Title 28, Section 347a) 2

National Labor Relations Act (C. 372; 49 Stat. 449) 2
Section 2 (6, 7); Section 7; Section 8 (1, 3); Section 10 (a), (c), (e) 2

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

OFFICIAL OPINIONS IN THE CASE.

The first reported opinion is that of the National Labor Relations Board, which opinion, including findings of fact, conclusions of law and final order thereon, is reported in 1 N. L. R. B. 454.

The next opinion is that of the United States Circuit Court of Appeals for the Ninth Circuit, which opinion is reported in Vol. 91 Fed.(2d) 790.

STATEMENT OF BASIS OF JURISDICTION.

Pursuant to Rule 12 of the General Rules of the Supreme Court, petitioner files this, its statement of the basis upon which it claims that the Supreme Court of the United States has jurisdiction upon certiorari to review the decision of the United States Circuit Court of Appeals for the Ninth Circuit.

(a) The statutory provisions which sustain the jurisdiction of the Supreme Court are Section 240a of the Judicial Code as amended by Act of February 13, 1925, also known as U. S. C. Title 28, Section 347a, and Section 10(e) of the National Labor Relations Act, Act of July 5, 1935 (c. 372, 49 Stat. 449).

(b) The statute of the United States, the interpretation and the validity of which as interpreted by the National Labor Relations Board and by the United States Circuit Court of Appeals for the Ninth Circuit is involved, is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449) which act is printed in full in the Appendix to Petition for Certiorari filed herein. The parts of said act, the interpretation, application and validity of which are involved are subdivisions (6) and (7) of Section 2, Section 7, subdivisions (1) and (3) of Section 8 and subdivisions (a) and (c) of Section 10. It is claimed by petitioners that as applied to petitioner's business of processing, canning, labeling, packing, storing and loading entirely in California, of fruit and vegetables produced in California and as applied to the small quantity of such vegetables produced elsewhere than

n California but which has come to rest in California efore the processing thereof entirely for a local ustomer takes place are local activities and are not ithin the regulatory power conferred on Congress y the Commerce Clause of the Constitution of the Jnited States and not within the jurisdiction intended o be conferred on the National Labor Relations Board by said Act. The parts of said Act involved erein are the following:

"Definitions. Sec. 2. When used in this Act—

(6) The term 'commerce' means trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia or any Territory of the United States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The Term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"Right of employees. Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own

choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"Unfair Labor practices. Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made.

"Prevention of Unfair labor practices. Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may

be established by agreement, code, law, or otherwise.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from any such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practices, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint."

On November 2, 1935 the National Labor Relations Board, hereinafter called the "Board", acting through the Regional Director for the Twentieth Region, filed its complaint charging petitioner with an unfair labor practice affecting commerce, within the meaning of Section 8, subdivisions (1) and (3) and Section (2), subdivisions (6) and (7) of the National Labor Re-

lations Act by reason of the discharge by petitioner of thirty-one of its employees.

On November 8, 1935, petitioner herein, as respondent therein, filed its answer to said complaint denying that any of the acts alleged in said complaint or any other acts by petitioner or its business constituted interstate commerce or affect such commerce within the meaning of said Act. A hearing was held before a trial examiner beginning on December 23, 1935 and continuing with adjournments to January 6, 1936. At the opening of such hearing petitioner objected to the jurisdiction of the Board on Constitutional grounds. Again at the close of such hearing petitioner moved for a dismissal of the case on the ground that the evidence in the record affirmatively established that petitioner is not engaged in interstate or foreign commerce and that the labor dispute in question affected only the production of petitioner's product before commerce therein began.

On April 2, 1936, the Board rendered and filed its decision including its findings of fact, conclusions of law, and order (R. 55-84) wherein it decided that petitioner's business "constitutes a continuous flow of trade, traffic and commerce among the several states and with foreign countries" and that, "By (such) discrimination in regard to hire and tenure of employment and terms and conditions of employment respondent (petitioner) interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" and ordered petitioner to cease and desist from (1) discouraging

membership in the Union; (2) discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining such Union and (3) in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and further ordered petitioner to reinstate said discharged employees to their former positions without prejudice to any rights previously enjoyed by them and to pay each of such employees a sum of money equal to that which he would normally have earned subsequent to such discharge less the amount each has earned prior to petitioner's offer of reinstatement and to post notices that in the future petitioner will cease and desist as aforesaid.

On January 12, 1937, the Board petitioned the United States Circuit Court of Appeals for the Ninth Circuit for an order enforcing the aforesaid order (R. 93) and on July 31, 1937 said Circuit Court rendered and filed its decision (R. 138) modifying the Board's decision as to petitioner's Seabright Plant on the ground that all of the products of said plant were sold in California and as thus modified, affirmed and ordered enforced the decision and order of the Board.

On October 28, 1937, petitioner filed in this court its petition for certiorari to review the decision of the Circuit Court of Appeals for the Ninth Circuit and on November 4, 1937 petitioner filed herein proof of service of said petition. This court granted certiorari on December 6, 1937.

If there be any question of jurisdiction here (and petitioner submits there is none) petitioner respectfully refers the Court to the following cases:

National Labor Relations Board v. Jones & Laughlin Steel Corporation, (No. 419);

National Labor Relations Board v. Fruehauf Trailer Company, (Nos. 420, 421);

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., (Nos. 422, 423), 301 U. S. 1-103, 81 L. Ed. 893;

The Associated Press v. National Labor Relations Board, 301 U. S. 103; 81 L. Ed. 953;

Washington, Virginia & Maryland Coach Company v. National Labor Relations Board, 301 U. S. 142; 81 L. Ed. 965.

STATEMENT OF THE CASE.

The Santa Cruz Packing Company is a California corporation owning and operating packing plants at Seabright, California and Oakland, California wherein it processes, cans, labels, packs and stores fruit and vegetables which it sells in the open market. It does not maintain or operate any canneries, warehouses, sales offices, or representatives in any other state. With the exception of a small quantity of hominy which it cans for Stokely Bros., an Indiana Corporation operating a warehouse in Oakland, California, and which hominy is resold only to local trade in California (R. 689-690), all of such fruit and vegetables are produced solely within the State of California. Its 1935 pack,

including a small carry-over from the previous year, was slightly less than 1,700,000 cases. Approximately thirty-nine per cent of this pack was sold to purchasers outside California, the sales being either f. o. b. or c. i. f. San Francisco-Bay Point contracts.

The Circuit Court of Appeals found that no shipments in interstate commerce were made by petitioner from its Seabright Plant and modified the orders of the Board so that they are to apply only to the employees of the Oakland Plant.

In conjunction with the cannery at Oakland and as an integral part of the establishment, petitioner maintained a warehouse where the canned goods after being labeled were packed and stored ready for shipment (R. 152-153). The labor practices investigated by the Board involved employees in this warehouse whose duties were to label the cans, pack and store them ready for shipment and assist in loading them on the carrier as orders were received. They helped load trucks or freight cars some of which had destination out of California. As a result of the labor practices picket lines were established at the cannery; the goods were declared "hot cargo" and other unions refused to handle them. As to these practices the Board found (R. 76):

> "The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their unloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members

> of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move 'hot' Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo."

The refusal of the other unions to handle petitioner's goods was a violation of the award made in October, 1934, by Judge Sloss acting as Federal Arbiter following the San Francisco maritime strike of that year (R. 196-197).

On these facts the Board held that petitioner's labor practices affected interstate and foreign commerce and the Circuit Court of Appeals after modifying the Board's order as aforesaid affirmed said order and ordered it enforced on the ground that the labor dispute in question interfered with the commerce in thirty-nine per cent of petitioner's product intended for interstate commerce and therefore such practices prevented said part of petitioner's product from entering that commerce.

ASSIGNMENT OF ERRORS.

The Circuit Court of Appeal erred:

(1) In holding and deciding that the labor relations between petitioner and its employees engaged in processing, canning, labeling, packing, storing and

loading entirely in the State of California fruit and vegetables grown entirely in said state, except for a small quantity of hominy produced outside of California and which is sold entirely to a local dealer for resale in California, are subject to the regulatory provisions of the National Labor Relations Act.

(2) In holding and deciding that because 39 per cent of petitioner's product ultimately enters into interstate and foreign commerce its labor relations affecting only its production business before commerce in any of such products begins are subject to the regulatory powers of Congress under the Commerce Clause (Subdiv. 3 of Sec. 8 of Art. I) of the Constitution of the United States and within the jurisdiction of the National Labor Relations Board under the National Labor Relations Act.

(3) In holding and deciding that the alleged unfair labor practices had a direct and immediate effect on interstate and foreign commerce.

(4) In ordering petitioner to cease and desist from the labor practices therein complained of.

(5) In ordering petitioner to reinstate with back pay the thirty-one former employees named therein.

SUMMARY OF ARGUMENT.

I.

As the National Labor Relations Act contemplates the exercise of control over commerce by the Federal Government within Constitutional bounds it does not confer on the Board jurisdiction over any matters

which are not "in commerce" or which do not burden or obstruct commerce.

National Labor Relations Board v. Jones Laughlin Steel Corporation, 301 U. S. 1; 81 L. Ed. 893;

National Labor Relations Board v. Fruehauf Trailer Company, 301 U. S. 1; 81 L. Ed. 893;

National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc., 301 U. S. 1; 81 L. Ed. 893;

The Associated Press v. National Labor Relations Board, 301 U. S. 103; 81 L. Ed. 953;

Washington, Virginia & Maryland Coach Company v. National Labor Relations Board, 301 U. S. 142; 81 L. Ed. 965.

II.

Where there has been no antecedent movement of the raw products in commerce the business of canning, labeling, packing, storing and loading of fruit and vegetables produced wholly in California is not "in commerce" and a labor dispute therein cannot burden or obstruct a commerce which has not begun, therefore the National Labor Relations Act does not apply to such dispute and the Board had no jurisdiction over petitioner or its employees.

Carter v. Carter Coal Company, 298 U. S. 238; 80 L. Ed. 1160;

A. L. A. Schecter Poultry Corp. v. United States, 295 U. S. 495; 79 L. Ed. 1570;

Veazie v. Moor, 14 How. 568; 14 L. Ed. 545;

Coe v. Errol, 116 U. S. 517; 29 L. Ed. 715;

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346;
Chassaniol v. Greenwood, 291 U. S. 584; 78 L. Ed. 1004;
Heisler v. Thomas Colliery Company, 260 U. S. 245; 67 L. Ed. 237;
Oliver Mining Company v. Lord, 262 U. S. 172; 67 L. Ed. 929;
Utah Power and Light Company v. Pfost, 286 U. S. 165; 76 L. Ed. 1038;
Lehigh Valley R. Co. v. Commonwealth of Pennsylvania, 145 U. S. 192; 36 L. Ed. 672.

III.

Where small quantities of a raw product are shipped into the state for canning and sale to local trade in California, the National Labor Relations Act does not apply for the reason that commerce in such product has ended and the canning and subsequent handling are local affairs and labor disputes in such affairs do not directly burden or obstruct commerce.

A. L. A. Schecter Poultry Corp. v. United States, supra;
East Ohio Gas Company v. Tax Commission of Ohio, 283 U. S. 465; 75 L. Ed. 1171;
Public Utilities Commission v. Landon, 249 U. S. 236; 63 L. Ed. 577;
Atlantic Coast Line R. Co. v. Standard Oil Co., 275 U. S. 257; 72 L. Ed. 270;
Industrial Association of San Francisco v. United States, 268 U. S. 64; 69 L. Ed. 849.

IV.

Unless this court is willing to go so far as to say that the power of Congress extends over all labor disputes involving production industries, the Board did not have jurisdiction in the instant case for the reason that the Constitutional power of Congress cannot be made to depend on the intention of the producer to sell its product in interstate or foreign commerce or the fortuitous circumstance that it may ultimately sell a part of such product outside the state wherein it is produced.

Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 346;
Champlin Refining Co. v. Corporation Commission, 286 U. S. 210; 76 L. Ed. 1062;
Federal Compress and W. Co. v. McLean, 291 U. S. 17; 78 L. Ed. 622;
Oliver Mining Company v. Lord, supra;
Chassaniol v. Greenwood, supra;
Heisler v. Thomas Colliery Company, supra;
Arkadelphia Milling Company v. St. Louis S. W. R. Co., 249 U. S. 134;
Carter v. Carter Coal Company, supra.

V.

The designation of petitioner's produce as "hot cargo" by the International Longshoremen's Association and the refusal of such association to handle such product was an unlawful conspiracy in violation of the Federal Anti-Trust Act and a violation of the Sloss Arbitration Award and any burden or obstruction to commerce resulting therefrom is indirect and remote and does not extend the power of Congress or

the jurisdiction of the Board over petitioner's production business.

Bedford Cut Stone Company v. Journeymen S. C. Association, 274 U. S. 37, 71 L. Ed. 916;
Duplex Printing Press Company v. Deering, 254 U. S. 443; 65 L. Ed. 349;
Coronado Coal Company v. United Mine Workers of America, 268 U. S. 295; 69 L. Ed. 963;
Lowe v. Lawlor, 208 U. S. 274; 52 L. Ed. 488;
Anderson v. Ship Owners Assn., 272 U. S. 359; 71 L. Ed. 298;
Local 167 I. B. T. v. United States, 291 U. S. 293; 78 L. Ed. 804.

VI.

The instant case is not in any respect comparable to the cases wherein this court had held that by reason of the effects or burdens on interstate commerce the power of Congress extends to the regulation of intrastate affairs.

Rate Cases

Houston E. & W. T. R. Co. v. United States, 234 U. S. 342; 58 L. Ed. 1341;
Florida v. United States, 282 U. S. 194; 75 L. Ed. 291;
Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563; 66 L. Ed. 371.

Board of Trade and Stockyards Cases

Board of Trade v. Olsen, 262 U. S. 1; 67 L. Ed. 839;

Hill v. Wallace, 259 U. S. 44; 66 L. Ed. 822;

Swift and Company v. United States, 196 U. S. 375; 49 L. Ed. 518;

Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735;

Tagg Bros. & Moorehead v. United States, 280 U. S. 420; 74 L. Ed. 524.

Railway Appliance, Employers' Liability, and Railway Labor Cases

Southern R. Co. v. United States, 222 U. S. 20; 56 L. Ed. 72;

Baltimore & O. R. Co. v. Interstate Commerce Commission, 221 U. S. 612; 55 L. Ed. 878;

Mondou v. New York, N. H. & H. R. Co., (Second Employers' Liability Cases) 223 U. S. 1; 56 L. Ed. 327;

Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548; 74 L. Ed. 1034;

Virginia R. Co. v. System Federation No. 40, 300 U. S. 515; 81 L. Ed. 789.

Anti-Trust Cases

Standard Oil Co. of N. J. v. United States, 221 U. S. 1; 55 L. Ed. 619;

United States v. American Tobacco Company, 221 U. S. 106; 55 L. Ed. 663;

Addyston Pipe and Steel Company v. United States, 175 U. S. 211; 44 L. Ed. 136.

ARGUMENT.

I.

THE FACTS OF THE INSTANT CASE DISTINGUISH IT FROM THE LABOR BOARD CASES (NATIONAL LABOR RELATIONS BOARD v. JONES LAUGHLIN STEEL CORPORATION, 301 U. S. 1 AND COMPANION CASES.

In the *Jones Laughlin* case, while the manufacturing was done entirely in Pennsylvania, the company owned coal and limestone mines and quarries in other states. It owned iron mines in Michigan. It owned lake and river transportation facilities and terminal railroads. It operated steamships on the Great Lakes. It owned warehouses in various cities in other states. It owned steel fabricating plants in Long Island City, New York and in New Orleans. It operated stores and warehouses in states other than Pennsylvania for the distribution of equipment and supplies for drilling and operating oil and gas wells and for pipe lines and refineries and pumping stations. It had sales offices in twenty cities throughout the United States and Canada. Approximately seventy-five per cent of its product was shipped out of Pennsylvania. It drew its raw materials from Michigan, Minnesota, West Virginia and Pennsylvania. In reference to such far-flung activities this court said:

> "When industries organize themselves on a national scale, making their relations to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of an industrial war."

In the *Fruehauf Trailer* case, the company imported from Ohio, Illinois, Indiana and other states more than fifty per cent of the raw materials used in its plant in Detroit. It maintained thirty-one branch sales offices in twelve different states and had dealers and distributors in all the principal cities of the United States. More than eighty per cent of its sales were of products shipped outside the State of Michigan.

In the *Friedman* case, the company imported from outside the State of Virginia 99.57 per cent of the raw material which it used in the manufacture of clothing and 82.8 per cent of its finished product was sold to customers outside of the State of Virginia. It maintained its own sales office and show room in New York City.

In each of said cases the companies were actually engaged in business in states other than the state wherein the labor dispute arose. In each there was an antecedent importation of raw material. In each instance manufacture was followed by sales in other states where each company was as much engaged in business as in the state where the manufacturing was done. The companies, as this court found, were truly organized on a national scale and this court merely refused to close its eyes to the obvious fact that the importation of raw materials, their manufacture or fabrication, and their subsequent sale was in each case a single business and not several independent businesses. In the instant case, the fruit and vegetables, with the exception of a small quantity of hominy, are

produced entirely in California. There is no antecedent movement of such materials in commerce. There is no subsequent handling of the product in other states by petitioner. All sales are made in California. Petitioner maintains no sales agencies, warehouses or distribution depots elsewhere. We submit the instant case is in no way comparable to any of the foregoing cases. Here manufacture precedes commerce and is not a part thereof. As this court said in the *Jones Laughlin Steel Corporation* case:

> "The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the Commerce Clause itself establishes, between commerce 'among the several states' and the internal concerns of the state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

As to the small quantity of hominy imported from outside California for processing and sale to local trade commerce therein is at an end and the goods have come to rest so that the labor dispute operated only on a local activity.

> *A. L. A. Schecter Poultry Corp. v. United States,* 295 U. S. 495; 79 L. Ed. 1570.

The National Labor Relations Act defines the term "affecting commerce" (Sec. 2(7)) as follows:

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or ob-

structing commerce or the free flow of commerce."

As to this definition, the court in the *Jones Laughlin Steel Corporation* case said:

> "This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds."

We submit that the constitutional bounds which this court must determine in the instant case, do not include petitioner's business of canning, labeling, storing and loading of fruit and vegetables grown only in California or the processing of the small quantity of hominy imported from other states for sale only in the local markets. We submit, the instant case is not within the principles announced in any of the labor board cases cited but on the contrary is the very antithesis of such cases.

II.

THERE CAN BE NO SUCH THING AS BURDENING OR OBSTRUCTING A COMMERCE WHICH HAS NOT BEGUN AND WHERE THERE IS NO ANTECEDENT MOVEMENT IN COMMERCE OF THE RAW MATERIALS, MANUFACTURE OR PROCESSING OF SUCH MATERIALS ARE NOT COMMERCE BUT ARE DISTINCT THEREFROM AND THE NATIONAL LABOR RELATIONS ACT DOES NOT APPLY TO LABOR DISPUTES ARISING OUT OF SUCH MANUFACTURE AND PROCESSING.

The commonly accepted definition of the verb "burden" is "to encumber; to lay a heavy load upon; to oppress with anything; to oppress or to overload." The definition of the verb "obstruct" is "to block up; to stop up or close, as a way; to place an obstacle in or to fill with obstacles or impediments to passing; to impede, hinder or retard."

The basis upon which the Circuit Court of Appeals upheld the power of Congress and the jurisdiction of the Board in the instant case is that the labor dispute in question interfered with the labeling, packing, storing and loading of petitioner's product and caused other unions to designate petitioner's product as "hot cargo" and to refuse to handle such product thereby preventing the thirty-nine per cent of such product ultimately destined for sale in interstate commerce from reaching such destination and therefore interstate traffic in such products was throttled at its source. The court said:

> "We therefore hold that the Constitution granted to the Congress the power to regulate respondent's labor relations with reference to all

> of its employees at its Oakland plant engaged in the production of canned and packed fruit and vegetables, the processing of 39% of which was intended for interstate commerce and had been throttled for a considerable period from entering that commerce, although the remaining 61% remain within the state of production."

We submit that it is entirely impossible to burden or obstruct something which is not in existence, which has not yet commenced. While the labor disputes in petitioner's plants might diminish or reduce the volume of goods "to be" transported in interstate commerce as found by the court below, such effects are indirect and remote and do not come within the powers of Congress under the commerce clause.

In the case of *Lehigh Valley R. Co. v. Commonwealth of Pennsylvania,* 145 U. S. 192, 26 L. Ed. 672, the court said:

> "And while interstate commerce cannot be regulated by a State by the laying of taxes thereon, in any form, yet whenever the subject of taxation can be separated so that that which arises from interstate commerce can be distinguished from that which arises from commerce wholly within the state, the distinction will be acted upon by the Courts, and the State permitted to collect that arising upon commerce solely within its own territory. *Ratterman v. Western U. Teleg. Co.,* 127 U. S. 411, 32 L. Ed. 229."

The limits of the powers of Congress in relation to the regulation of matters of local concern is well

stated in the case of *A. L. A. Schecter Poultry Corporation v. United States,* as follows:

> "Direct effects are illustrated by the Railroad cases we have cited as, e. g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employee engaged in interstate transportation by the negligence of an employee engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power.
>
> "If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the Federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to Federal control."

That was the unanimous opinion of this court. In the case of *Carter v. Carter Coal Company,* 298 U. S. 238, 80 L. Ed. 1160, which was likewise the unanimous opinion of this court as to the labor provisions of the Act there in question, this court said:

> "That commodities produced or manufactured within a state are intended to be sold or transported outside the state does not render their pro-

> duction or manufacture subject to federal regulation under the Commerce clause."

This language was used in the *Carter* case with reference to the application of the labor provisions of the Guffey Coal Act to the business of mining of coal, before commerce therein had begun. In the *Schecter* case it was applied with reference to the slaughter, sale and distribution of poultry after commerce therein had ended. In the *Carter* case this court said:

> "The Federal regulatory power ceases when interstate commercial intercourse ends; and, correlatively, the power does not attach until interstate commercial intercourse begins. There is no basis in law or reason for applying different rules to the two situations."

The Circuit Court of Appeals in the instant case said:

> "The analogy between the Shreveport case and the Santa Cruz Fruit Packing Co. is complete. In each the conduct of the intrastate business, the one as to its rates and the other as to its labor, affects the interstate business arising from the activities of the respective companies. In one this is accomplished by producing an *unfair rate* upon the commodities 'to be' transported, and in the other by throttling the interstate business in the commodities *'to be'* transported. In both the intrastate business puts 'in jeopardy' the proper and fair conduct of commerce among the states. The acceptance by the Supreme Court of the doctrine of the Shreveport case again demonstrates the overruling of the Carter case."

Upon numerous occasions when litigants have endeavored to get under the protecting wing of the Commerce Clause to escape state taxation or state regulation, this court has always separated the purely local business of production or manufacture from the interstate commerce which followed. It has done this for the purpose as announced in the case of *Lehigh Valley R. Co. v. Commonwealth of Pennsylvania* in order not to unduly hamper the powers of the states in the matters of state taxation and regulation. We submit that the same rules should be applied in distinguishing that which is intrastate from that which is interstate for the purpose of determining the extent of the regulatory powers of the Federal Government under the Commerce Clause. The boundary line between the two does not migrate back and forth depending on which government seeks to impose the restrictions or regulations.

In the case of *Veazie v. Moor,* 14 How. 568; 14 L. Ed. 545, the court declared:

> "Nor can it be properly concluded, that, because of the products of domestic enterprise in agriculture or manufacture, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected is legitimately within the import of the phrase *foreign commerce,* or fairly implied in any investiture of the power to regulate such commerce. A pretension as far reaching as this would extend to contracts between citizen and citizen of the same state, would control the pursuits of the planter, the grazier, the manufacturer, the mech-

> anic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these allocations, the results of which may not become the subjects of foreign commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several states, towards an ultimate destination, like the one above mentioned."
>
> *Coe v. Errol,* 116 U. S. 517;
> *Kidd v. Pearson,* 128 U. S. 1; 32 L. Ed. 346.

In *Chassaniol v. Greenwood,* 291 U. S. 584; 78 L. Ed. 1004, this court, in reference to taxes levied by the State of Mississippi on cotton intended for shipment to other states, said:

> "But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

The distinction between mining, manufacturing, processing of producing articles intended for interstate commerce is a fact which cannot be overlooked by the court or changed by the legislative edicts of Congress. In the case of *Oliver Mining Company v. Lord,* 262 U. S. 172; 67 L. Ed. 929, the mining of the ore and its shipment in interstate commerce was almost a continuous process. Most of the ore was mined from open pits and was lifted directly from the ground into railroad cars and started on its interstate journey. Only a negligible percentage of the iron ore so mined remained in the state, yet the court said:

> "The ore does not enter interstate commerce until after the mining is done and the tax is im-

posed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does but this is not a forbidden burden or interference."

Heisler v. Thomas Colliery Company, 260 U. S. 245; 67 L. Ed. 237.

Other cases which recognize the distinction between that which is a local activity and that which is interstate commerce even though the movement is continuous are the cases of *East Ohio Gas Company v. Tax Commission,* 283 U. S. 465; 75 L. Ed. 1171, and *Utah Power and Light Company v. Pfost,* 286 U. S. 165; 76 L. Ed. 1038. In the gas case the gas was pumped at high pressure from the West Virginia gas fields to distribution centers in Ohio where the pressure was reduced to render the gas suitable for consumption. The movement of the gas from the fields in West Virginia to the burners used by the consumers in Ohio was continuous, yet the court was able to see and determine the distinction between the interstate movement of the gas and its local sale and distribution. The line of separation was recognized by the court in the following language:

"But when the gas passes from the distribution lines into the supply mains it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into many thou-

> sand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, as shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail * * *
>
> "It follows that the furnishing of gas to consumers in Ohio municipalities by means of distribution plants to supply the gas suitable for the service for which it is intended is not interstate commerce but in business purely a local concern exclusively within the jurisdiction of the State."

In the gas company case the court was able to and did fix the line of separation between the commerce that was interstate and the distribution of the product that was purely local even though the movement from the gas fields to the consumer's premises was continuous. There the local activity commenced after the interstate transportation had ended. In the *Utah Power and Light Company* case the electric transmission lines were connected to the generating plant in Idaho and extended to the distribution centers in Utah. The consumer in Utah by turning his switch "set in operation the generating appliances in Idaho". The quantity of electricity produced in Idaho was controlled entirely by the demand of the consumers in Utah, there was no perceptible interval between manufacture, transmission and distribution. The

electricity taken from the revolving generators was transmitted to the ultimate consumer with the speed of light, yet this court recognized the distinction between the process of manufacture and the commerce which succeeded such manufacture in the following language:

> "In response to what is in effect an order, there is production as well as transmission of a definite supply of an article of trade. The manufacture to order of goods and their immediate shipment to the purchaser furnish a helpful analogy, notwithstanding the fact that there the successive steps from order to delivery are open to physical observation, while here the succession of events is chiefly a matter of inference—although inference which seems unavoidable. The process by which the mechanical energy of falling water is converted into electrical energy, despite its hidden character, is no less real than the conversion of wheat into flour at the mill. * * *
>
> "Without regard to the apparent continuity of the movement, Appellant, in effect, is engaged in two activities, not in one only. So far as it produces electrical energy in Idaho, its business is purely intrastate, subject to state taxation and control. In transmitting the product across the state line into Utah, Appellant is engaged in interstate commerce, and state legislation in respect thereof is subject to the paramount authority of the commerce clause in the Federal Constitution."

From the foregoing authorities we submit the conclusion is inescapable that petitioner's business of processing, labeling, packing, storing and loading its

product is entirely local in character and distinct from the transportation, sale, disposition and commerce in such product and it is immaterial whether a single case of such product or the whole thereof is ultimately destined for interstate commerce.

III.

THE CANNING BY PETITIONER OF THE SMALL QUANTITY OF HOMINY AND ITS SUBSEQUENT SALE ENTIRELY IN CALIFORNIA CAN HAVE NO MORE DIRECT EFFECT ON INTERSTATE COMMERCE IN THIS CASE THAN THE SLAUGHTERING OF CHICKENS HAD IN THE SCHECTER CASE AND SUCH PART OF PETITIONER'S BUSINESS IS GOVERNED BY THE RULE ANNOUNCED IN THAT CASE.

While the importation of hominy by petitioner is limited to a very small quantity and happens only during the short canning season, the quantity or the continuity of the flow is immaterial. All of the product is sold to Stokely Bros. (R. 689-690) for sale to local trade. Any argument that this activity brings petitioner within the purview of the National Labor Relations Act is fully answered by this court in the *Schecter* case, as follows:

> "The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the state and is then held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce has ceased."

In the case of *East Ohio Gas Company v. Tax Commission of Ohio,* 283 U. S. 465, 75 L. Ed. 1171, where the movement of the gas from the gas fields of West Virginia to the cities in Ohio was continuous, this court held that interstate commerce in the gas ended when the pressure was reduced and the stream divided into many small streams for distribution to the consumers. This ruling permitted the Tax Commission to tax the gas. A similar decision was made by this court in the case of *Public Utilities Commission v. Landon,* 249 U. S. 236, 63 L. Ed. 577, which permitted the State Utilities Commission to regulate the rates at which the gas so imported must be sold.

In the case of *Industrial Association v. United States,* 268 U. S. 64, 69 L. Ed. 849, wherein the Association was charged with conspiring to violate the Anti-Trust Act, the court said:

> "Interference with interstate trade was neither desired or intended. On the contrary, the desire and intention was to avoid any such interference, and to this end, the selection of materials subject to the permit system was substantially confined to California production. The thing aimed at and sought to be attained was not restraint of the interstate sale or shipment of commodities, was a purely local matter; mainly, regulation of building operations within a limited local area, so as to prevent their domination by the labor unions. * * * The process went no further than to take away the latter's (building contractors) opportunity to use, and therefore, his incentive to purchase. The effect upon, and interference with, interstate trade, if any, were clearly inci-

dental, indirect and remote,—precisely such an interference as this court dealt with in *United States Workers v. Coronado Coal Company,* supra, and *United Leather Workers International Union v. Herkert & M. Trunk Company,* 265 U. S. 457, 68 L. Ed. 1104."

IV.

THE POWER OF CONGRESS TO REGULATE LABOR DISPUTES IN A LOCAL INDUSTRY CANNOT BE MADE TO DEPEND ON THE INTENTION OF THE PRODUCER TO SELL THE PRODUCT IN INTERSTATE COMMERCE OR THE UNCERTAIN CIRCUMSTANCE OF WHETHER HE MAY SO SELL ALL OR ANY PART OF SUCH PRODUCT.

In the case of *Kidd v. Pearson,* 128 U. S. 1; 32 L. Ed. 346, Kidd claimed the right to manufacture intoxicating liquors in the State of Iowa although such manufacture was prohibited, except for certain purposes not involved therein, by the laws of the state on the ground that he intended to ship the entire output of his plant in interstate commerce and dispose of it in other states. This court disposed of his intention in the following language:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw material into a change of form for use. The functions of commerce are different. The buying and selling and transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional

sense embraces the regulation at least of such transportation. The legal definition of the term as given by this Court in *County of Mobile v. Kimball,* 102 U. S. 691, 702, is as follows: 'Commerce with foreign nations and among the states, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining * * * in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the northwest, and the cotton planter of the south, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the states, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests * * * interests which in their nature are, and must be, local in all the details of their successful management."

See also *Champlin Refining Co. v. Corporation Commission,* 286 U. S. 210; 76 L. Ed. 1062; *Federal Com-*

press and W. Co. v. McLean, 291 U. S. 17; 78 L. Ed. 622; *Oliver Mining Company v. Lord,* 262 U. S. 172; 67 L. Ed. 929; *Chassaniol v. Greenwood,* supra; *Heisler v. Thomas Colliery Company,* supra; *Carter v. Carter Coal Company,* supra; *Arkadelphia Milling Company v. St. Louis S. W. R. Co.,* 249 U. S. 134.

The intention or even the certainty that a part or all of petitioner's product will eventually be sold and disposed of in other states or in foreign nations is entirely immaterial. The matter has been decided so many times by this court that reference to it seems almost presumptuous, yet in view of the attempt made by Congress in the National Labor Relations Act to expand the powers of the Federal Government by what it calls *findings of fact and policy* and by definitions we desire to refer to the emphatic language of this court on some previous occasions. In the *Heisler* case the court said:

> "Whether any statute or action of a state impinges upon interstate commerce depends upon the statute or action, not upon what is said about it or the motive which impelled it; and a tax upon articles in one state that are destined for use in another state cannot be called a regulation of interstate commerce, whether imposed in a certainty of a return from a monopoly existing, or in the doubt and chances because of competition. The action of the state, as a regulation of interstate commerce, does not depend upon the degree of interference; it is illegal in any degree.
>
> "We may, therefore, disregard the adventitious considerations referred to and their confusion, and, by so doing we can estimate the contention

made. It is that products of a state that have, or are destined to have, a market in other states, are subject of interstate commerce, though they have not moved from the place of their production or preparation.

"The reach and consequences of the contention repell its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coal, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the south, the wheat of the west and its meats, the cotton of the south, the shoes of Massachusetts and the woolen industries of other states at the very inception of their production and growth; that is, the fruits unpicked, the cotton ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to states other than those of their production.

"* * * Ingenuity and imagination have been exercised heretofore upon a like contention. * * * to express it, as the Court (Coe v. Errol) did, 'there must be a point of time when they (goods) cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation; and

> that moment seems to us to be a legitimate one for this purpose in which they commence their final movement for transportation from the state of their origin to that of their destination' ".

The fact that labor disputes in a local industry may diminish the amount of goods available for shipment in interstate commerce and may decrease the power of striking employees to purchase from outside the state goods to be transported in interstate commerce, and commerce may thereby be diminished, yet such results only indirectly affect commerce. The court recognized this in the Minnesota rate case (*Simpson v. Shepherd*), 230 U. S. 352, 57 L. Ed. 1511, where the court said:

> "The freedom of local trade may stimulate interstate commerce, while restricted measures within the police power of the state enacted exclusively with respect to internal business, as distinguished from interstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volumes of articles transported into or out of the state."

This court in discussing the Minnesota rate case and referring to *Kidd v. Pearson,* supra, and *Heisler v. Thomas Colliery Company,* supra, and the case of *Coronado Coal Company v. United Mine Workers,* 268 U. S. 295, 69 L. Ed. 963, in the *Schecter* case said:

> "The fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions."

The court in discussing this point in the *Carter* case said:

> "A consideration of the foregoing and of many cases which might be added to those already cited, render inescapable the conclusion that the effect of the labor provisions of the act, including those in respect of minimum wages, wage agreements, collective bargaining, and the Labor Board and its powers, primarily fall upon production and not upon commerce; and confirms the further resulting conclusion that production is a purely local activity. * * *
>
> "That the production of every commodity intended for interstate sale and transportation has some effect upon interstate commerce may be, if it has not already been, freely granted; and we are brought to the final and decisive inquiry, whether here that effect is direct, as the 'preamble' recites, or indirect. * * *
>
> "The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity. And the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result. Such effect as they may have upon commerce however extensive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character."

V.

THE DESIGNATION OF PETITIONER'S PRODUCT AS "HOT CARGO" BY THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AS A RESULT OF THE LABOR DISPUTE IN QUESTION AND THE REFUSAL OF MEMBERS OF SUCH ASSOCIATION TO HANDLE SUCH PRODUCT WAS AN UNLAWFUL CONSPIRACY UNDER THE ANTI-TRUST ACT, (ACT OF JULY 2, 1890, CH. 647, 26 STAT., AT L. 209), AND LIKEWISE A VIOLATION OF THE SLOSS ARBITRATION AWARD, AND CANNOT BE A BASIS FOR EXTENDING THE POWERS OF CONGRESS OVER PETITIONER'S LOCAL LABOR RELATIONS SO AS TO DEPRIVE PETITIONER OF ITS CONSTITUTIONAL RIGHT TO TERMINATE ITS LABOR CONTRACTS WITH ANY GROUP OF ITS EMPLOYEES.

The Board found (R. 76):

> "The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their unloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move 'hot' Santa Cruz cargo were those members of the sailors who comprised the crews of steam schooners and whose duties include the handling of cargo."

That these acts which the Board found caused the burden or obstruction to interstate and foreign com-

merce in petitioner's merchandise to *be* transported and which the court below decided brought this case within the rule announced in the *Shreveport* case was an unlawful conspiracy on the part of the members of that association and their sympathizers is settled by the decisions of this court in the following cases:

Anderson v. Ship Owners' Association, 272 U. S. 359, 71 L. Ed. 298;

Bedford Cut Stone Co. v. Journeymen S. C. Assn., 274 U. S. 37, 71 L. Ed. 916;

Duplex Printing Press Company v. Deering, 254 U. S. 443, 65 L. Ed. 349;

Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295, 69 L. Ed. 963;

Lowe v. Lawlor, (Danbury Hatters' Case), 208 U. S. 274, 52 L. Ed. 488;

Local 167 I. B. T. v. United States, 291 U. S. 293, 78 L. Ed. 804.

In the instant case, the carriers, including the railroads, trucking companies and steamship lines, were ready and willing to handle petitioner's product. Had they conspired among themselves to obstruct commerce in such product by refusing to transport it, it would have been an unlawful conspiracy, such as this court condemned in the *Anderson* case, supra, wherein it said:

> "If the restraint thus imposed had related to the carriage of goods in interstate and foreign commerce—that is to say, if each shipowner had precluded himself from making any contract of transportation directly with the shipper, and

had put himself under an obligation to refuse to carry for any person without the previous approval of the Associations—the unlawful restraint would be clear."

Is it any the less an unlawful restraint because the employees of such carriers acting through their various unions and associations refuse to handle petitioner's merchandise? Is it any the less an unlawful conspiracy because brought about by the edict of a labor union which has set up a super-government within the United States through which it claims the right to determine what merchandise shall be transported in commerce and what shall not be so transported? The answer to these questions was given by this court in the *Bedford Cut Stone Company* case, supra, wherein the union by designating the plaintiff's product as "unfair" prevented its members from working on such product (stone). This court said:

> "Whatever may be said as to the motives of the respondents or their general right to combine for the purpose of redressing alleged grievances of fellow craftsmen or protecting themselves or their organization, the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning

of the Anti-Trust Act as interpreted by this Court."

The other cases cited above are to the same effect, and we refrain from discussing them because it would be an unnecessary repetition, but, we submit, that if the labor dispute between petitioner and its employees had any effect on commerce; the effect was indirect and remote as held in the *Carter* case, supra. If commerce in the commodities *to be* transported was throttled as found by the court below, we submit, the unlawful conspiracy was the proximate cause of such throttling of commerce, and the labor dispute between petitioner and its employees was only a remote and indirect cause thereof.

VI.

THE INSTANT CASE IS IN NO WAY COMPARABLE TO THE CASES WHEREIN THIS COURT HAS UPHELD THE RIGHT OF CONGRESS TO REGULATE INTRASTATE AFFAIRS BECAUSE OF THEIR DIRECT EFFECTS UPON INTERSTATE COMMERCE.

We will discuss in this part of this brief the several classes of cases wherein this court has upheld the power of Congress over local affairs because of their effect upon interstate commerce.

(1) Rate Cases.

The Circuit Court of Appeals in the instant case held that the power of Congress under the commerce clause extended to the regulation of the labor relations

between petitioner and its employees, because 39 per cent of its product is intended for shipment in interstate and foreign commerce, because the effect of the labor dispute herein was to throttle the interstate business in the commodities to be transported. It said:

> "The analogy between the Shreveport case and the Santa Cruz Fruit Packing Co. is complete. In each the conduct of the intrastate business, the one as to its rates and the other as to its labor, affects the interstate business arising from the activities of the respective companies. In one this is accomplished by producing an unfair rate upon the commodities 'to be' transported, and in the other by throttling the interstate business in the commodities 'to be' transported. In both the intrastate business puts 'in jeopardy' the proper and fair conduct of the commerce among the states. The acceptance by the Supreme Court of the doctrine of the Shreveport case again demonstrates the overruling of the Carter case."

We submit that neither the *Shreveport* case (*Houston E. & W. T. R. Co. v. United States,* 234 U. S. 342, 58 L. Ed. 1341), nor any of the other rate cases, (*Florida v. United States,* 282 U. S. 194; 75 L. Ed. 291; *Railroad Commission v. Chicago B. & Q. R. Co.,* 257 U. S. 563; 66 L. Ed. 371) wherein this court has upheld the right of the Interstate Commerce Commission to prescribe intrastate rates because of their direct effect on interstate transportation of commodities, has any bearing upon the question herein involved for the reason that in each of those cases the court found that the lower intrastate rates discrim-

inated against interstate commerce. In the *Shreveport* case the court found:

> "The rates on these lines from Dallas and Houston, respectively, eastward to intermediate points in Texas, were much less, according to distance, than from Shreveport westward to the same points. It is undisputed that the difference was substantial, and injuriously affected the commerce of Shreveport. It appeared, for example, that a rate of 60 cents carried first-class traffic a distance of 160 miles to the eastward from Dallas, while the same rate would carry the same class of traffic only 55 miles into Texas from Shreveport. The first-class rate from Houston to Lufkin, Texas, 118.2 miles, was 50 cents per 100 pounds, while the rate from Shreveport to the same point, 112.5 miles was 69 cents. The rate on wagons from Dallas to Marshall, Texas, 147.7 miles, was 36.8 cents, and from Shreveport to Marshall, 42 miles, 56 cents. The rate on furniture from Dallas to Longview, Texas, 124 miles, was 24.8 cents, and that from Shreveport to Longview, 65.7 miles, was 35 cents. These instances of differences in rates are merely illustrative; they serve to indicate the character of the rate adjustment."

It is apparent that the discrimination in rates in the *Shreveport* case had the same direct effect on interstate commerce as the taxation had in the cases of *Brown v. Maryland,* 12 Wheat. 419, 6 L. Ed. 678, and *McCall v. People of the State of California,* 136 U. S. 104, 34 L. Ed. 391.

Similar discrimination with similar direct effects were found in the *Florida* case. In the *Chicago B. &*

Q. R. Co. case the court found that the lowering of the intrastate rates by the State of Wisconsin had the effect of materially increasing the revenue from the sale of tickets of the railroad from points immediately inside the state while decreasing the revenue from the sale of tickets from points immediately outside the state, thereby discriminating against such points.

Board of Trade and Stockyards Cases.

As we pointed out in our discussion under point I, this court found in the *Jones Laughlin,* the *Fruehauf Trailer Company* and *Friedman-Harry Marks* cases, supra, interstate movement of raw materials preceded manufacture and interstate movement of the manufactured articles followed such manufacture. In the *Board of Trade* cases (*Board of Trade v. Olsen,* 262 U. S. 1, 67 L. Ed. 839; and *Hill v. Wallace,* 259 U. S. 44, 66 L. Ed. 822) interstate commerce and traffic in the wheat commenced in the western states, concentrated in Chicago where the Board of Trade was located and wherein a change of ownership took place, and then continued on to eastern milling centers or seaboard points. It was the manipulation of the market for futures on the Chicago Board of Trade which the court found affected the country-wide price of the wheat, and directly affected the commerce therein. It was the constantly recurring practices of the Board of Trade that the Acts there in question sought to regulate.

In the *Stockyards* cases, (*Swift and Company v. United States,* 196 U. S. 375, 49 L. Ed. 518; *Stafford*

v. Wallace, 258 U. S. 495, 66 L. Ed. 735; *Tagg Bros. & Moorehead v. United States,* 280 U. S. 420, 74 L. Ed. 524) the movement in interstate commerce of the cattle and sheep began in the western states, halted at the stockyards where a change of ownership took place, and continued on to the eastern states where they were fattened or slaughtered. It was the practices at the stockyards that the Acts there in question sought to regulate. The facts showed that such practices had the effect of speeding up or retarding the flow of commerce, and consequently had a direct effect upon interstate commerce.

Railway Appliance, Employer's Liability and Railway Labor Cases.

In the case of *Southern Railway Company v. United States,* 222 U. S. 20; 56 L. Ed. 72, this court upheld the Safety Appliance Act as applied to locomotives and cars used in interstate railroads, even though the cars were at the time being used only for intrastate traffic. This court held that the absence of appropriate safety appliances on any part of a train is a menace not only to that train but to others, and upheld the Act as having a direct effect on interstate commerce. That was true because the locomotives and cars were capable of moving and did move in trains carrying interstate shipments, but suppose the Act had been applied to a narrow gauge intrastate railroad where the vehicles were incapable of being used on the broad gauge tracks used in interstate traffic, would this court or any other have upheld the Act merely because a break-down on the intrastate railroad would delay

or even prevent merchandise intended for interstate shipment from reaching the interstate carrier. We submit, that would be a case parallel to the instant case.

In the case of *Baltimore & O. R. Co. v. Interstate Commerce Commission,* 221 U. S. 612; 55 L. Ed. 878, and in *Mondou v. New York N. H. & H. R. Co.,* 223 U. S. 1; 56 L. Ed. 327, this court had under consideration the Hours of Service Act and the Employers' Liability Acts respectively. In the *Baltimore and Ohio Railroad* case the court found the hours of service worked by railway employees engaged in interstate traffic had a direct bearing upon the safety of that traffic. In the *Mondou* case (Second Employer's Liability case) this court held that the powers of Congress over the facilities of interstate commerce being plenary, it could make the carrier liable for compensation irrespective of negligence. We submit these cases are not in any way comparable to the instant case.

In the Railway labor cases (*Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks,* 281 U. S. 548; 74 L. Ed. 1034, and *Virginia R. Co. v. System Federation No. 40,* 300 U. S. 515; 81 L. Ed. 789), the labor regulations under consideration involved employees engaged in work having a direct bearing upon interstate commerce, in the one case, the clerks who did the clerical work necessary to the handling of interstate commerce, in the other, the shop crews who repaired the railroad equipment and appliances used in interstate commerce. We submit that those cases are entirely different from the instant case where the employees

in question had no connection with commerce, but were concerned only with the local activity of producing a marketable product, only a minor part of which was ever intended for sale in interstate or foreign commerce.

The Anti-Trust Cases

While in the cases of *Standard Oil Company v. United States,* 21 U. S. 1; 55 L. Ed. 619, and *United States v. American Tobacco Company,* 221 U. S. 106; 55 L. Ed. 663, the monopolistic schemes condemned included control of production, as well as manufacture, transportation and trade, the purpose of the unlawful combination was the control of trade. The control of production and manufacture were parts of the unlawful scheme, and as the schemes or combinations were condemned as a whole, the successive steps or parts fell under the ban of the Act. As in the conspiracy cases heretofore discussed, it was the purpose and the intent as well as the effect of the successive acts which brought the local activities within the control of Congress. In the case of *Addyston Pipe and Steel Company v. United States,* 175 U. S. 211; 44 L. Ed. 136, the six companies involved, by contracts between themselves as to bidding on jobs and the allocation of territory, controlled the prices at which steel pipe could be sold in practically all parts of the United States. While the sales of pipe in that case were local sales, the conspiracy extended to many states and it was the conspiracy which was condemned under the Anti-Trust Act. We submit that these cases like the conspiracy cases have no application to the instant case.

CONCLUSION.

Where there is no conspiracy or monopolistic practice involved, and no antecedent movement of raw materials in commerce, and the processing or manufacture involves products which are produced wholly within the state wherein manufacture or processing takes place, or if, as in the instant case, raw products are imported from other states for manufacture and processing but such materials have come to rest and are a part of the general mass of property within this State before such manufacture or processing takes place, such manufacture and processing are local activities and labor disputes therein affect only indirectly the subsequent commerce in such products, and Congress has no power to impose regulations governing labor disputes in such manufacturing or processing business, and therefore, the National Labor Relations Board had no jurisdiction over the labor dispute involved in the instant case. We submit the decisions of the Circuit Court of Appeals and of the Labor Board herein should be reversed.

Respectfully submitted,

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PAGE

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PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	6
Conclusion	15

CITATIONS

Cases:	
Beman et al. v. *Iowa Mfg. Co.*, 90 F. (2d) 249	7
Bowen et al. v. *James Vernor Co.*, 89 F. (2d) 968	7
Carter v. *Carter Coal Co.*, 298 U. S. 238	10
General Motors Corp. v. *Bajork et al.*, 90 F. (2d) 248	7
Industrial Association v. *United States*, 268 U. S. 64	14
Jeffery-DeWitt Insulator Co. v. *National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, No. 368, October Term 1937	7
Lyons et al. v. *Eagle-Picher Lead Mining Co.*, 90 F. (2d) 321	7, 15
Minnesota Rate Cases, 230 U. S. 352	12
National Labor Relations Board v. *Bell Oil & Gas Co.*, 91 F. (2d) 509	7, 15
National Labor Relations Board v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58	6, 8
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U. S. 49	6
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	6, 9, 10, 11, 14
Pennsylvania R. R. v. *Clark Brothers Coal Co.*, 238 U. S. 456	8
Pratt et al. v. *Oberman & Co.*, 89 F. (2d) 786	7
Renown Stove Co. v. *National Labor Relations Board*, 90 F. (2d) 1017	7
Shreveport Case, 234 U. S. 342	12
Southern Ry. Co. v. *United States*, 222 U. S. 20	13
Virginian Ry. Co. v. *System Federation No. 40*, 300 U. S. 557	8, 11
Wilson & Co. v. *Gates et al.*, 90 F. (2d) 247	7
Statute:	
National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq*	2
Sec. 2	5
Sec. 7	5
Sec. 8	2, 5
Sec. 10 (e)	2, 5

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PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion in the court below (R. 104–117) is reported in 91 F. (2d) 790. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 55–83) are reported in 1 N. L. R. B. 454.

JURISDICTION

The decree of the court below (R. 138–141) was entered on July 31, 1937. The petition for a writ of certiorari was filed on October 28, 1937, and was

served on November 4, 1937. The jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the National Labor Relations Act may validly be applied to the employees of a California cannery which derives the bulk of its fruit and vegetables from within the State of California and ships a very substantial proportion, but less than 50 per cent, of its product in interstate and foreign commerce.

STATUTE INVOLVED

The provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*), are set forth in the appendix to the petition and supporting brief, pp. i–xix.

STATEMENT

Pursuant to charges (R. 1–5) duly filed by Weighers, Warehousemen and Cereal Workers Local 38–44, International Longshoremen's Association, a labor organization (R. 79), the National Labor Relations Board, by its Regional Director at San Francisco, California, issued its complaint on November 2, 1935, alleging that petitioner had engaged in certain unfair labor practices prohibited by Sections 8 (1) and 8 (3) of the National

Labor Relations Act (R. 5–12). Petitioner filed its answer on November 8, 1935 (R. 14–20), which, by subsequent stipulation (R. 149), was deemed to apply to an amended complaint issued on November 14, 1935 (R. 20–28).

A hearing was held at Oakland, California on December 23 and 24, 1935, and on January 2, 3, and 6, 1936, before a trial examiner designated by the Board. At the outset, petitioner moved to dismiss the complaint on constitutional and other grounds (R. 145–146). This motion was denied (R. 149–150). Petitioner thereafter participated in the hearing to the extent of cross-examining witnesses called by the Board, but adduced no evidence in its own behalf. Full opportunity to examine and cross-examine witnesses and to adduce evidence was afforded all parties. At the close of the Board's case, respondent moved to dismiss on the basis of its original motion, on the ground that the evidence affirmatively showed that petitioner was not engaged in interstate or foreign commerce, and on other grounds not material here (R. 757–758). This motion was denied (R. 33–34). On January 30, 1936, the trial examiner filed an intermediate report finding that respondent was engaged in interstate and foreign commerce and that it had committed the unfair labor practices alleged (R. 30–48). Exceptions to this report were thereafter filed with the Board (R. 48–55).

On April 2, 1936, the Board issued its decision sustaining the trial examiner's rulings and setting forth its findings of fact, conclusions of law, and order (R. 55–83). In substance, the Board found:

Petitioner is a California corporation operating fruit and vegetable canneries at Oakland and Seabright, California, and is among the four or five largest concerns in the industry in California. The bulk of the agricultural commodities packed at the Oakland plant are grown in California. In 1935 respondent canned and packed approximately 1,700,000 cases of fruits and vegetables, of which approximately 37 per cent (or 627,000 cases) were shipped in interstate and foreign commerce, 51 per cent were shipped to points within the State of California, and 12 per cent remained unsold.[1] There is a constant stream of loading and shipping of products out of respondent's plant throughout the entire year, approximately 3,000 to 4,000 cases being loaded daily by petitioner's warehouse employees into overland trucks and freight cars, and, in the case of shipment by boat, into trucks for transportation to the docks (R. 60–62).

---

[1] The Circuit Court of Appeals seemed to assume that 39% of petitioner's products were shipped in interstate or foreign commerce (R. 106). The Board found that approximately 37% of the total production was so shipped (R. 61), and a simple computation from the above figures indicates that 42% of the amount actually sold in 1935 was so shipped. These discrepancies, of course, are not material.

With respect to the unfair labor practices alleged in the complaint, the Board found that respondent locked out and discharged 31 men, its entire force of warehousemen, because they organized and joined a labor organization, thereby discriminating against its employees in order to discourage membership in that organization and interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act (R. 63–75). These acts have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 75–77). The Board concluded that petitioner had engaged in unfair labor practices affecting commerce, within the meaning of Sections 8 (1) and 8 (3), and Sections 2 (6) and 2 (7) of the Act (R. 79–80).

Upon the basis of these findings, the Board ordered petitioner to cease and desist from further interference and discrimination, to reinstate with back pay the 31 employees discriminatorily discharged, and to post appropriate notices (R. 80–83).

On January 4, 1937, the Board filed in the court below its petition for the enforcement of this order, pursuant to Section 10 (e) of the Act (R. 93–101). On July 31, 1937, the court rendered an opinion upholding the Board's order as to all of respondent's employees at the Oakland plant (R.

104–117).[2] Judge Haney concurred in a separate opinion (R. 117–121), and Judge Wilbur dissented (R. 121–137). A decree of enforcement was entered on July 31, 1937 (R. 138–141).

ARGUMENT

The holding of the court below that the National Labor Relations Act may validly be applied to the kind of business in which the petitioner is engaged is in accordance with the principles approved by this Court at the last term. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58.

The test of jurisdiction laid down in the *Jones & Laughlin* case is whether "stoppage of * * * operations by industrial strife" would result in substantial interruption to the flow of interstate commerce. 301 U. S. at 41. Where such interruption would occur, the Court pointed out, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife," have a "close and intimate relation" to interstate commerce and are subject to federal regulation

[2] The order was modified to exclude application to the Seabright plant because the relation of that plant's operations to interstate commerce had not been established of record (R. 107, 116–117).

under this Act. 301 U. S. at 42, 43. In the *Fruehauf* and *Friedman-Harry Marks* decisions the Court, applying this principle, found the Act applicable not only to a vast, integrated enterprise such as the Jones & Laughlin Steel Corporation, but to smaller enterprises which were substantially dependent upon the movement of goods in the channels of interstate commerce. This rule has been uniformly followed, and the Act has been uniformly applied to such manufacturing enterprises by the various Circuit Courts of Appeals in proceedings to enforce or review orders of the Board. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, October Term 1937, No. 368; *National Labor Relations Board* v. *Bell Oil & Gas Co.,* 91 F. (2d) 509 (C. C. A. 5th); *Renown Stove Co.* v. *National Labor Relations Board,* 90 F. (2d) 1017 (C. C. A. 6th).[3]

Petitioner is one of the four or five largest cannery concerns in the State of California (R. 60, 692, 694), the center of one of the most important industries in the western United States

[3] See also the following decisions in injunction suits: *Bowen et al.* v. *James Vernor Co.,* 89 F. (2d) 968 (C. C. A. 6th); *Pratt et al.* v. *Oberman & Co.,* 89 F. (2d) 786 (C. C. A. 8th); *Beman et al.* v. *Iowa Mfg. Co.,* 90 F. (2d) 249 (C. C. A. 8th); *Wilson & Co.* v. *Gates et al.,* 90 F. (2d) 247 (C. C. A. 8th); *General Motors Corp.* v. *Bajork et al.,* 90 F. (2d) 248 (C. C. A. 8th); *Lyons et al.* v. *Eagle-Picher Lead Co.,* 90 F. (2d) 321 (C. C. A. 10th).

(Bd. Exhs. 15, 24, 28, 34). It is located in the San Francisco Bay area, the greatest shipping center in the United States for canned fruit and vegetables (Bd. Exhs. 25, 35). Petitioner employs at times as many as 1200 to 1500 men (R. 656). In 1935 it packed a total of some 1,700,000 cases of canned goods (R. 60, 407), and shipped an average of 3,000 to 4,000 cases daily (R. 61, 219), a very substantial proportion of which were destined for points outside of the State and the continental United States (R. 60–61, 407–409, 658, 663–664, 687, 688; Bd. Exh. 16). It is apparent that petitioner is substantially dependent on the channels of interstate and foreign commerce for the economic success of its enterprise; that its business, and the industry of which it is a part, are of more than local concern; and that labor strife at petitioner's plant would directly and substantially burden and obstruct interstate and foreign commerce, as actual experience demonstrated (R. 75–76, 185–188, 194–196, 233, 419–424, 438, 443, 506). *Cf. Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 556.[4] The validity of the Act's application here is therefore clearly sustained by the principles laid down in the *Jones & Laughlin* case and other cases decided under this Act at the last term.

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[4] In this connection the particular terms of petitioner's sales contracts, and the point at which title passes, is immaterial. *Cf. National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. at 72; *Pennsylvania R. R.* v. *Clark Brothers Coal Co.*, 238 U. S. 456, 468.

Respondent seeks to distinguish these precedents on the grounds (1) that the fruit and vegetables which petitioner packs and thereafter causes to be shipped in the channels of interstate commerce are grown in the State of California; and (2) that the quantity of petitioner's pack so shipped, while substantial, is less than 50 per cent of the total. Neither distinction is tenable.

(1)

The validity of the Act's application is unaffected by the fact that "the bulk"[5] of the fruits and vegetables canned and shipped by petitioner are grown in the State of California, where petitioner's plant is located. In the *Jones & Laughlin* case the Court expressly stated that its decision did not turn on the conception that the manufacturing process was carried on in a "stream" or "flow", of commerce, wherein the raw materials arriving from without the State came to rest temporarily at the plant and later went forward again in interstate commerce. 301 U. S. at 36. The Court gave "full weight" to the argument that the "stream of commerce" was broken by the steel company's manufacturing operations at Aliquippa. 301 U. S. at 41. The Court expressly stated that congressional power is not limited to transactions which can be deemed to be an essential part of such

[5] The hominy packed by petitioner is received from without the State (R. 689–690).

a "flow," that "burdens and obstructions may be due to injurious action springing from other sources," and that the commerce power "was plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' " 301 U. S. at 36, 37.

Certainly the danger to interstate commerce from labor disputes in a cannery shipping its products in interstate commerce is not diminished by the fact that the cannery is located in the State in which the products are grown. The underlying basis of the statute is as applicable and the danger it is designed to meet is as compelling here as in the case of the Friedman-Harry Marks Clothing Company, the Fruehauf Trailer Company, or other businesses of that general character.

The decision in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, was deemed "not controlling" in the *Jones & Laughlin* case, not because the bituminous coal there involved originated in the state of "production," but because "the provisions of the statute relating to production were invalid upon several grounds,—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process." 301 U. S. at 41; see also at 39–40. The distinction was not founded on

the type of business subject to regulation. *Cf. Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. at 557.

To accept petitioner's view in such cases would be to deny Congressional authority on the basis of a rule of thumb having no relation to the essential purposes of the commerce clause as here applied. The result would be that virtually all enterprises engaged in the recovery of the nation's basic natural resources, such as lumber, petroleum, metals and coal, as well as the produce canning and packing industry here involved, would be excluded from the operation of the Act. In all of these industries, labor disputes would substantially and directly impede interstate commerce and be of national concern. To adopt petitioner's argument would be, as this Court said in the *Jones & Laughlin* case, "to shut our eyes to the plainest facts of our national life." 301 U. S. at 41.

(2)

Petitioner's second argument—that the Act may not be applied because the portion of petitioner's product shipped in interstate and foreign commerce is less than 50 per cent of the whole—is likewise without merit. Of a total 1935 pack of approximately 1,700,000 cases, about 627,000 cases of petitioner's product were shipped to other states

and foreign countries, in the regular course of business.[6] Petitioner's interstate and foreign commerce is very substantial intrinsically, and is also a very substantial proportion of the total. If petitioner's employees packed only the 627,000 cases shipped in interstate commerce or foreign commerce, there could be no question that "a stoppage of operations by industrial strife" at petitioner's plant would substantially interrupt the flow of interstate commerce. The fact that the same employees also pack cases destined for intrastate consumption does not make the effect of a stoppage upon interstate shipments any the less substantial or direct. It is obvious that no regulation can be imposed protecting the interstate shipments which will not apply to the employees engaged in packing all the products of the plant.

Under such circumstances, where the Federal power can not be exercised to protect interstate commerce without at the same time covering intrastate transactions inseparable from the interstate, it may be applied to the whole. *Shreveport Case,* 234 U. S. 342; *Minnesota Rate Cases,* 230 U. S. 352,

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[6] This comprised 37 per cent of the total pack and about 42 per cent of the amount actually sold and shipped in 1935. (*Supra*, p. 4.) About 79 per cent of the 1935 pack was actually billed to customers having their principal offices outside the State of California (R. 407–409). The discrepancy arises because from 40 to 50 per cent of petitioner's product is sold to Stokely Brothers, an Indiana corporation, of which all but five or ten per cent is shipped locally at the Stokely Corporation's direction (R. 655, 658).

399; *Southern Railway Co.* v. *United States*, 222 U. S. 20. This necessarily follows from the constitutional mandate that "this Constitution and the laws of the United States * * * made in pursuance thereof * * * shall be the supreme law of the land." Petitioner's contention, and the argument of Judge Wilbur, dissenting in the Circuit Court of Appeals (R. 132), would result in the disappearance of Federal power and the supremacy of state power over transactions directly and substantially affecting interstate commerce whenever they were inseparably intermingled with a slightly larger quantity of intrastate transactions. Such a doctrine is inconsistent both with the express language of the Constitution and with principles repeatedly recognized by this Court.

Apart from the authorities, petitioner's argument would give rise to such problems of administration as to call for its rejection on that ground alone. As the court below said (R. 115):

> The suggestion that we should make an academically arbitrary 50% as the boundary line between the two jurisdictions ignores the practical necessities of industry. Shall it be 50% in volume or price? What happens when for the first 6 months of the year 60% is exported and 40% is domestic, and for the rest of the year the percentages are reversed? Does the Federal control end on June 30th? On which is the burden of proof, the state interest or the Federal? How unfair may be the competition between the in-

> dustry producing the 60% for export under Federal regulation and its competitor with 40% under state regulation or no regulation at all!
>
> Industry and business cannot thrive, in some cases it could not exist, in the uncertainty of such an abstract mathematical solution of the problem.

Other problems may be suggested by the fact that 85 per cent or more of the substantial quantities of peaches, pears, apricots and spinach packed by petitioner are shipped to customers outside the State (R. 687–688), whereas items such as tomatoes and pork and beans are sold locally in large part.

Questions of this character concerning the application of the Act are necessarily questions of degree, to be determined on the facts of individual cases as they arise. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. at 32, 37. A doctrine of *de minimis* may well be applicable in this field of law as in others. *Industrial Association* v. *United States*, 268 U. S. 64, 84. But inasmuch as petitioner is engaged in interstate commerce on a large scale, that problem is not presented here. It is sufficient for the case at hand that this petitioner's business is well within the ambit of the Federal commerce power.

CONCLUSION

The judgment below is correct and in accord with the precedents. There is no conflict among the Circuits.[7] The petition should be denied.

Respectfully submitted.

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NOVEMBER 1937.

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[7] The decisions of other Circuit Courts of Appeals are in accord with the decision below. *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th); *Lyons et al.* v. *Eagle-Picher Lead Mining Co.*, 90 F. (2d) 321 (C. C. A. 10th).

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PAGE

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PAGE

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Summary of argument	9
Argument:	
Petitioner's operations at its Oakland plant have a close and intimate relation to a substantial flow of interstate and foreign commerce; and the National Labor Relations Act is, therefore, applicable to the operations at that plant	13
1. The Act may validly be applied to prevent unfair labor practices which obstruct interstate commerce in the products of a plant whose raw materials are not obtained from outside the state	19
2. The circumstance that the interstate shipments affected by petitioner's unfair labor practices were less than fifty per cent of its total pack is immaterial	31

CITATIONS

Cases:	
Baltimore & Ohio R. Co. v. *Interstate Commerce Commission*, 221 U. S. 612	35
Bedford Cut Stone Company v. *Journeymen Stone Cutters' Association*, 274 U. S. 37	27, 36
Beman et al. v. *Iowa Mfg. Co.*, 90 F. (2d) 249	19
Bowen et al. v. *James Vernor Co.*, 89 F. (2d) 968	19
Boyle v. *United States*, 259 Fed. 803	36
Carter v. *Carter Coal Co.*, 298 U. S. 238	10, 22, 23, 24, 25, 26, 28
Chassaniol v. *Greenwood*, 291 U. S. 584	22
Coe v. *Errol*, 116 U. S. 517	22
Columbus Heating & Ventilating Co. v. *Pittsburgh Bldg. Trades Council et al.*, 17 F. (2d) 806	36
Coronado Coal Company v. *United Mine Workers of America*, 268 U. S. 295	27, 36, 37
Duplex Printing Press Company v. *Deering*, 254 U. S. 443	27
Florida v. *United States*, 282 U. S. 194	35
General Motors Corp. v. *Bajork et al.*, 90 F. (2d) 248	19
Heisler v. *Thomas Colliery Co.*, 260 U. S. 245	22
Industrial Ass'n v. *United States*, 268 U. S. 64	37
International Organization, United Mine Workers of America, et al. v. *Red Jacket Consolidated Coal & Coke Co.*, 18 F. (2d) 839	37

Cases—Continued.

	Page
Irving v. *Neal*, 209 Fed. 471	36
Jeffery-De Witt Insulator Co. v. *National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, 58 Sup. Ct. 55	18
Kidd v. *Pearson*, 128 U. S. 1	22
Lehigh Valley R. Co. v. *Pennsylvania*, 145 U. S. 192	22
Lindley v. *Wabash Ry. Co.*, 120 Neb. 195, certiorari denied, 283 U. S. 863	36
Local 167, International Brotherhood of Teamsters v. *United States*, 291 U. S. 293	27, 37
Loewe v. *Lawler*, 208 U. S. 274	36
Lyons et al. v. *Eagle-Picher Lead Co. et al.*, 90 F. (2d) 321	19, 21, 24
Minnesota v. *Blasius*, 290 U. S. 1	22
Minnesota Rate Cases, 230 U. S. 352	32
Moore v. *Chesapeake & Ohio Ry. Co.*, 291 U. S. 205	35
Mooresville Cotton Mills v. *National Labor Relations Board* (C. C. A. 4th), decided January 4, 1938	18, 21, 24, 31
Myers v. *Bethlehem Shipbuilding Corporation*, decided January 31, 1938, No. 181, October Term, 1937	39
National Labor Relations Board v. *Carlisle Lumber Co.* (C. C. A. 9th), decided December 13, 1937	21
National Labor Relations Board v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58	10, 18
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U. S. 49	10, 18
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	10, 11, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 32, 39
National Labor Relations Board v. *Remington Rand, Inc.* (C. C. A. 2d), decided February 14, 1938	18
Pennsylvania R. Co. v. *Clark Bros. Coal Mining Co.*, 238 U. S. 456	31
Pratt v. *Oberman & Co. Inc.*, 89 F. (2d) 786	19
Public Utilities Commission v. *Landon*, 249 U. S. 236	22
Railroad Commission of Wisconsin v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563	35
Renown Stove Co. v. *National Labor Relations Board*, 90 F. (2d) 1017	18
Shreveport Case, 234 U. S. 342	12, 32, 35, 40
South Covington & Cincinnati Street Ry. Co. v. *City of Covington*, 235 U. S. 537	31
Southern Railway v. *United States*, 222 U. S. 20	32, 35
Stafford v. *Wallace*, 258 U. S. 495	22
Swift & Company v. *United States*, 196 U. S. 375	22, 37
Townsend v. *Yeomans*, 301 U. S. 441	22
United Leather Workers v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457	37
United Mine Workers of America et al. v. *Coronado Coal Co. et al.*, 259 U. S. 344	36

Cases—Continued. Page
United States v. *Workingmen's Amalgamated Council of New Orleans*, 54 Fed. 994 36
Virginian Railway Co. v. *System Federation No. 40*, 300 U. S. 515 27
Western Ry. of Alabama v. *Mays*, 197 Ala. 362 36
Wilson & Co., Inc., v. *Gates et al.*, 90 F. (2d) 247 19
Statute:
National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449 (U. S. C., Sup. II, Title 29, Secs. 151 et seq.):
Sec. 2 2
Sec. 7 2
Sec. 8 ..... 2, 3
Sec. 10 3
Miscellaneous:
Corps of Engineers, U. S. Army; U. S. Shipping Board, Port Series No. 12, *The Ports of San Francisco and Oakland*, 1933, pp. 160, 278 16
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U. S. Census of Manufactures (1933), *California, Summary of Industries*, pp. 1–8 14
U. S. Census of Manufactures (1935), *Canning and Preserving*, pp. 4, 6 14
U. S. Maritime Commission, Division of Research, *United States Waterborne Intercoastal Traffic, 1936* (Report No. 317), pp. 2–13 16

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinions in the court below (R. 104–17) are reported in 91 F. (2d) 790. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 55–83) are reported in 1 N. L. R. B. 454.

JURISDICTION

The decree of the court below (R. 138–41) was entered on July 31, 1937. The petition for a writ of certiorari was filed on October 28, 1937, and was granted on December 6, 1937. The jurisdiction of the Court rests on Section 240 (a) of the Judicial

Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the National Labor Relations Act may validly be applied to the employees of a California cannery which derives the bulk of its fruit and vegetables from within the State of California and ships a substantial proportion, but less than 50 per cent, of its product in interstate and foreign commerce.

STATUTE INVOLVED

The statute involved, hereinafter referred to as the Act, is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*). The pertinent provisions are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or

discourage membership in any labor organization * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

SEC. 2. (6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country,

SEC. 2. (7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

STATEMENT

Upon written charges duly filed by Weighers, Warehousemen, and Cereal Workers Local 38–44, International Longshoremen's Association, a labor organization, the Board, on November 2, 1935, issued and served upon petitioner its complaint and notice of hearing (R. 1–13). The complaint alleged that petitioner had engaged at its Oakland plant in

certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act (R. 5–12). Petitioner filed its answer on November 8, 1935, denying that it had engaged in unfair labor practices affecting commerce, as alleged (R. 14–20). On November 14, 1935, the Board issued an amended complaint (R. 20–28). By stipulation, the allegations of the amended complaint were deemed put in issue by petitioner's original answer (R. 149).

A hearing was held at Oakland, California, on December 23 and 24, 1935, and on January 2, 3, and 6, 1936, before a trial examiner duly designated by the Board. At the outset, petitioner moved to dismiss the complaint on constitutional grounds, and on others not here material (R. 145–46). This motion was denied (R. 149–50). Petitioner thereafter participated in the hearing to the extent of cross-examining witnesses called by the Board, but adduced no evidence in its own behalf. Full opportunity to examine and cross-examine witnesses and to adduce evidence was afforded the parties. At the close of the Board's case petitioner moved to dismiss on the ground that the evidence affirmatively showed that petitioner was not engaged in interstate or foreign commerce, and on the other grounds advanced in its prior motion (R. 757–58). This motion was denied (R. 33–34). On January 30, 1936, the trial examiner filed an intermediate report finding that petitioner had engaged in the

unfair labor practices affecting commerce alleged in the complaint (R. 30–48). Exceptions to this report were thereafter filed with the Board (R. 48–55). On April 2, 1936, the Board issued its decision sustaining the trial examiner's rulings and setting forth its findings of fact, conclusions of law, and order (R. 55–83).

Petitioner, the Board found, is a California corporation operating fruit and vegetable canneries at Oakland and Seabright, California. It is among the four or five largest concerns in the industry in that state, which is the center of the national canning industry. At the Oakland plant, the one here involved, petitioner employs during the "peak" season in the summer months from 1,200 to 1,500 men. The bulk of the agricultural commodities packed by petitioner are grown in California.

The Board found that in 1935 petitioner's "total pack"—which, in common with the court below and the petitioner, we understand to refer to the pack at the Oakland plant alone[1]—amounted to approxi-

[1] Although the Board's finding and the evidence upon which it was based, taken literally, may be open to the interpretation that they relate to the combined pack and out-of-state shipments of both the Oakland and the Seabright plants, the court below interpreted them as applying only to Oakland (R. 116). This view, which has not been questioned by either party, is supported by the record. It was to the operations at the Oakland plant that the proceedings were directed (cf. note 2, *infra*). And the finding in question was based upon a statement which petitioner's counsel offered to produce to avoid the delay resulting from exami-

mately 1,700,000 cases of canned fruits and vegetables, of which approximately 37 per cent (or 627,000 cases) were shipped in interstate and foreign commerce, 51 per cent were shipped to points within the State of California, and 12 per cent remained unsold in December 1935. The record does not show the nature of the sales organization or the sales methods by which petitioner has built up and maintained its national market; sales abroad are handled through brokers in the foreign markets who cable their orders to petitioner (R. 670). Actual shipments, the Board found, are made under f. o. b. San Francisco Bay Points sales contracts in the case of shipments to points in the United States outside the State of California, and under c. i. f. sales contracts (Canners' League Form) in the case of the bulk of the foreign shipments. There is a constant stream of loading and shipping of products out of the Oakland plant throughout the entire year. In 1935 approximately three to four thousand cases were loaded daily at that plant for shipment to points inside and outside the state by water, rail, and truck. The loading of the products of the Oakland cannery upon railroad cars and overland trucks and upon trucks for transportation to the

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nation of petitioner's Oakland warehousemen concerning out-of-date shipments from that plant (R. 406–409, 608). Although this statement gives the only aggregate figures in the record, it should be noted that other evidence amply supports the Board's finding (R. 62) that there was "a continuous flow of trade, traffic, and commerce" from the Oakland plant to points outside the state (e. g., R. 153-156, 218–223, 237–238, 284–285, 296).

docks was part of the work of petitioner's force of approximately 30 warehousemen, whose discharge was the basis of the unfair labor practices charged in the complaint (R. 60–63).

The Board found that Local 38–44 had commenced to organize the petitioner's warehousemen in July 1935. By the end of the month all the permanent eligible warehousemen had applied for membership. Upon first hearing of this development, on August 5th, Huddleson, general manager of the plant, called an unprecedented meeting of all the warehousemen at which he announced that he would not permit a union in the plant and threatened to let the work out to a contractor. This position Huddleson reiterated the following day in response to a request from the union to negotiate concerning terms of employment. On August 7th the warehousemen attended a union meeting, having first obtained assurance from their foremen that attendance would not lead to their discharge. Returning from the meeting, members of the night shift were prevented from entering the plant by a cordon of guards armed with sawed-off shotguns, and the next morning the members of the day crew were similarly excluded. Thereafter, petitioner operated its warehouse with non-union labor supplied by a contractor. Petitioner's tactics, which the Board termed "deliberately provocative" (R. 68), resulted in the immediate formation of a picket line by the warehousemen who had been locked out. With the cooperation of teamsters, dock warehouse-

men, stevedores, and sailors, this picket line was maintained until September 27, 1935, with such effectiveness that eventually the movement of trucks from warehouse to wharves ceased entirely. Meanwhile, Huddleson, the general manager, refused repeatedly to reinstate the men except on "the understanding that the organizers * * * will stay away from them and leave them alone" (R. 62–72, 75–76).

The foregoing acts of petitioner, the Board found, have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 75–77). The Board concluded that petitioner had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act, and ordered petitioner to cease and desist from further interference and discrimination, to reinstate with back pay the 31 employees discriminatorily discharged, and to post appropriate notices (R. 79–83).

On January 4, 1937, the Board filed in the court below its petition for the enforcement of this order, pursuant to Section 10 (e) of the Act (R. 93–101). On July 31, 1937, the court rendered an opinion upholding the Board's order as to all of petitioner's employees at the Oakland plant (R. 104–17).[2]

[2] The order was modified to exclude application to the Seabright plant because the relation of that plant's operations to interstate commerce had not been established of record (R. 107, 116–117). The Board here takes no ex-

Judge Haney concurred in a separate opinion (R. 117–21), and Judge Wilbur dissented (R. 121–37). A decree of enforcement was entered on July 31, 1937 (R. 138–41).

On October 28, 1937, petitioner filed in this Court its petition for a writ of certiorari. The petition was granted on December 6, 1937. The petition states (pages 4–5) that the Board's findings with respect to the unfair labor practices alleged are not challenged. Accordingly, the sole issue before the Court is whether the National Labor Relations Act may validly be applied to petitioner's operations at its Oakland, California, plant.

SUMMARY OF ARGUMENT

Petitioner is engaged in canning, packing, and shipping fruit and vegetables in Oakland, California. It is the fourth or fifth in size of such canneries in that state, which is the center of the canning industry in the United States; and annually ships large quantities of its products in interstate and foreign commerce. Stoppage of operations as a result of industrial strife in petitioner's plant would directly obstruct the movement of those commodities in interstate and foreign commerce. There thus exists a "close and intimate" relation between petitioner's operations and the flow of commerce; and the National Labor Relations Act

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ception to this limitation of its order. It does not construe the order as having been directed to petitioner's operations at the Seabright plant.

accordingly may validly be applied to petitioner's plant. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 41.[3]

1. This conclusion is not affected by the fact that the products processed by petitioner are grown in the State of California. In the *Jones and Laughlin* case the Court expressly stated that its decision did not turn on the conception that the manufacturing process was carried on in a "stream" or "flow" of commerce, wherein the raw materials arriving from without the state came to rest temporarily at the plant and later went forward again in interstate commerce (301 U. S. at 36). The contention that the stream of commerce had been broken the Court held was not relevant to the issue involved (301 U. S. at 41). The determinative factor was the obstructing effect of industrial strife upon the interstate movement of goods.

Carter v. *Carter Coal Company,* 298 U. S. 238, does not support petitioner's contention. The *Carter* decision did not purport to rest on the difference between mining operations and manufacturing enterprises which utilize raw materials obtained through the channels of interstate commerce. Nor did this Court in the *Jones & Laughlin* case, in holding that the *Carter* case was not controlling, suggest that it was to be distinguished upon such a ground.

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[3] See also *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58.

The danger of an obstruction to interstate commerce, and the appropriateness of the means adopted by the Congress to remove it, were the decisive factors in each decision.

The *Jones & Laughlin* decision establishes that the Congress has power to prevent the obstruction to interstate commerce caused by the unfair labor practices condemned in the present Act. Neither the fact nor the degree of obstruction to commerce in manufactured products can in reason depend upon the place of origin of the raw materials. As this Court stated in the *Jones & Laughlin* case, Congressional authority over interstate commerce extends to the protection of such commerce "no matter what the source of the dangers which threaten it" (301 U. S. at 36–37). No distinction can properly be drawn between activities which obstruct interstate commerce in raw materials, in manufactured products, or both.

The geographic fact of concentration of natural resources in particular regions, far from lessening national concern in the industries immediately dependent upon those resources, heightens it. It does so none the less because of the natural, if not necessary, circumstance of the location of such industries at the point of concentration of the resources. The view which petitioner urges would frustrate one of the great purposes of the com-

merce power as realized in this statute, by removing from the reach of Congressional protection industries whose operations in interstate and foreign commerce are of vital importance to the national welfare and whose interruption or cessation by industrial strife would create problems of the deepest national concern.

2. Approximately 37 per cent of the product of petitioner's plant is shipped in interstate or foreign commerce. The same employees prepare and ship both the goods which go to points outside California and those which do not. No separation of the employees into those working on goods destined for interstate shipment and those working on goods to be consumed in California is possible. Congress has power to regulate both interstate and intrastate activities when they are inseparably intermingled in this way. *Shreveport Case,* 234 U. S. 342. The suggestion that the power of Congress over such intermingled transactions disappears if more than 50 per cent of the transactions are intrastate would establish an arbitrary and impracticable rule of thumb in violation of the fundamental principle of the supremacy of federal power. A review of the decisions in which this Court has sustained federal regulation of intrastate activities because of their deleterious effects upon commerce demonstrates that the validity of such legislation has never turned upon whether the interstate commerce affected was greater in quan-

tity than the intrastate transactions which were necessarily subjected also to the regulation imposed. Clearly, protection to interstate commerce need not be withheld because in affording that protection intrastate commerce is also safeguarded.

ARGUMENT

PETITIONER'S OPERATIONS AT ITS OAKLAND PLANT HAVE A CLOSE AND INTIMATE RELATION TO A SUBSTANTIAL FLOW OF INTERSTATE AND FOREIGN COMMERCE; AND THE NATIONAL LABOR RELATIONS ACT IS, THEREFORE, APPLICABLE TO THE OPERATIONS AT THAT PLANT

Petitioner is engaged at its Oakland plant in canning, packing, and shipping fruits and vegetables, the bulk of which are grown in California (R. 14–15). It is the fourth or fifth in size of such canneries in that state, which is by far the most important center of the canning industry in the United States, producing in terms of the value of the product approximately three times as much as any other state (R. 692–694).[4] Among California

[4] Approximately 130 concerns operate 192 fruit and vegetable canneries in California, making up an industry which far exceeds in size the cannery industry of any other state. In 1933, a depression year, a yearly average of 84,274 wage earners were employed by the national canning industry (excluding sea food), of whom an average of 24,357 found employment in California. The latter figure rose to 60,855 during September, one of the four peak months. California accounted for 30 per cent of the $440,000,000 value of products of the industry in that year. The second most important state, New York, employed an average of 7,039

industries, the canning of food (excluding sea food) is first in the number of wage earners employed and is exceeded in the value of the product only by petroleum refining.[5] At times petitioner employs as many as 1,200 to 1,500 men at its Oakland plant, and during 1935 shipped from its warehouse at that plant an average of 3,000 to 4,000 cases of canned goods daily (R. 656, 219).

This enterprise of large proportions is, to a substantial degree, dependent upon interstate and foreign commerce for the regular marketing of its products. From the data supplied by petitioner it appears that, during 1935, 627,000 cases of its goods were shipped in such commerce, this amount constituting 37 per cent of petitioner's total pack of

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workers, and accounted for one-tenth of the value of products of the industry (Bd. Exs. 15, 28). California maintained substantially the same position in 1935, canning in that year 75 per cent of the total United States pack of asparagus, 65 per cent of the spinach, 96 per cent of the apricots, 80 per cent of the orange juice, 98 per cent of the peaches, 31 per cent of the pears, and 47 per cent of the plums. U. S. Census of Manufactures (1935), *Canning and Preserving*, pp. 4, 6. In 1934, California produced more than half of the 50,435,153 cases of canned fruits and vegetables flowing from canneries located in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, loosely referred to in the trade as the "western" area. This area in the previous year produced 78 per cent of the entire American production of canned fruits and 14 per cent of the canned vegetables (Bd. Exs. 24, 33, 34, 36).

[5] U. S. Census of Manufactures (1933), *California, Summary of Industries*, pp. 1–8.

1,699,270 cases (R. 407).[6] There is continuous loading and shipping of products during the entire year (R. 665–66). Petitioner utilizes the services of interstate carriers by water, truck, and rail, a spur track connecting the Oakland plant with the main line of the Southern Pacific Railroad (R. 153, 156, 661–64, 667, 668). Shipments are made to Connecticut, Illinois, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, and Pennsylvania, as well as to foreign countries (R. 153–54, 220, 663). The water shipments are facilitated by the location of the plant in the San Francisco Bay area, the greatest shipping center for canned fruits and vegetables in the United States.[7]

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[6] Petitioner's counsel stipulated that 9.02 per cent of its pack, or 153,274 cases, was shipped to foreign countries (R. 407). Aside from the foreign shipments, 69.68 per cent of the pack, or 1,184,051 cases, were billed to purchasers located outside the State of California, but 60 per cent of this amount or 710,431 cases, was not shipped out of the state (R. 408, 658). 473,620 cases thus move in interstate commerce, giving, with the foreign shipments, a total of 626,894 cases which leave the state. This constitutes 36.89 per cent of the total pack, as the Board found (R. 61). The slight inaccuracy involved in the Circuit Court of Appeals' computation that 39 per cent of the pack entered foreign and interstate commerce (R. 106) can, of course, have no material bearing upon the issue here presented.

[7] Approximately 80 per cent of the total 1933 American exports of three canned fruits and two canned vegetables were from this area (Bd. Exh. 25). Over the ten year period ending in 1931 shipments of canned goods from the entire San Francisco Bay area were exceeded in im-

Upon the basis of these undisputed facts, it is clear that the court below did not err in holding the National Labor Relations Act validly applicable to petitioner. At the last term this Court upheld the Act as an appropriate exercise of federal power, and laid down as the test of its permissible application whether "stoppage of * * * operations by industrial strife" would result in substantial interruption to the free flow of interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 41. Where such interruption would occur, the Court pointed out, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife," have a "close and intimate relation" to interstate commerce and are subject to federal regulation under this Act, designed to prevent them (301 U. S. at 42, 43). In the present case, stoppage of operations by strife

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portance only by petroleum; such shipments constituted 35 per cent of the total foreign commerce and 45 per cent of the other water-borne commerce originating from Oakland, one of the two constituent ports making up the San Francisco Bay Customs District. Corps of Engineers, U. S. Army; U. S. Shipping Board, Port Series No. 12, *The Ports of San Francisco and Oakland*, 1933, pp. 160, 278. Of the 448,601 tons of intercoastal traffic in canned fruits received by the east coast ports in 1936, 384,495 tons or 85.7 per cent, originated in California ports, of which 361,037 tons, or 80.5 per cent, originated in San Francisco. New York City received nearly half of these shipments, or 191,044 tons, of which 162,135 tons originated in California ports, 150,349 tons coming from San Francisco. U. S. Maritime Commission, Division of Research, *United States Waterborne Intercoastal Traffic, 1936* (Report No. 317), pp. 2–13.

between petitioner and its production or warehouse employees at the Oakland plant would directly obstruct—and in fact did obstruct[8]—the flow of large quantities of canned fruits and vegetables from that plant to other states and foreign countries. The cessation of shipments of such magnitude cer-

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[8] Immediately after the lockout, petitioner's warehousemen formed a picket line at Oakland which was maintained 24 hours a day from August 8 to September 27, 1935, and eventually stopped all movement of goods from the plant to the wharves. They also appealed to the Oakland Labor Council, with the result that workers who had theretofore performed successive steps in shipping petitioner's product would no longer do so. For more than six weeks the teamsters who hauled the goods to the docks, the warehousemen who there unloaded the trucks prior to reloading the canned goods into ships, the stevedores who customarily did the reloading, and those union members of the crews of steam schooners who stowed cargo, all declined to handle the product. Bargemen and teamsters at Sacramento joined in the boycott. Only when Judge Sloss, Federal arbiter, ruled on September 27, that the action of the stevedores violated the Longshoremen's Arbitration Award of October 1934, did the tie-up cease. The warehousemen then filed charges with the Board (R. 185–88, 194–98, 200–01, 233, 417–24, 438–40, 443–46, 462).

It is scarcely necessary to point out that these occurrences are important only as illustrating the appropriateness of the protection afforded by the Act. They do not, as petitioner suggests (Supplemental brief, pp. 38–41), constitute the claimed "basis" of the Board's jurisdiction; and the legality or illegality of the acts involved is in no way in issue. The reasonable likelihood of interruption of commerce by industrial strife supports jurisdiction without proof of actual obstruction. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–42. The fact that obstruction occurred in a particular form does not determine federal power; nor is it to be assumed that

tainly cannot be regarded as without national significance and concern.

Petitioner's business is indistinguishable, in the interstate characteristics which are relevant under the principles of the *Jones & Laughlin* case, from the manufacturing enterprises held to come within those principles in *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, and *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58. Those enterprises were of moderate size, as contrasted with the Jones & Laughlin Steel Corporation, but each was dependent to a substantial degree upon the interstate movement of goods, which would cease or be diminished as a result of industrial strife originating from unfair labor practices in its manufacturing operations.[9]

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the Congress intended, or is empowered, to protect interstate commerce only from obstruction occurring without violation of law.

[9] Following these decisions, the Circuit Courts of Appeals for the Second, Fourth, and Sixth Circuits, the only circuits in addition to the Ninth to pass on the question, have enforced orders of the Board against manufacturing concerns differing, we think, in no material respect from petitioner. *National Labor Relations Board* v. *Remington Rand, Inc.* (C. C. A. 2d), decided February 14, 1938; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), cert. den. 58 Sup. Ct. 55; *Mooresville Cotton Mills* v. *National Labor Relations Board* (C. C. A. 4th, Jan. 4, 1938); *Renown Stove Co.* v. *National Labor Relations Board*, 90 F. (2d) 1017 (C. C. A. 6th). The Eighth and Tenth Circuits have made similar rulings in cases not

Petitioner, although it concededly ships large quantities of its products in interstate and foreign commerce, and is thus substantially dependent upon such commerce, seeks to distinguish this uniform line of precedents upon two grounds: (1) in the cases decided by this Court the Act was applied to employees engaged in an intermediate process in an interstate flow of goods, first as raw materials and finally as finished products, whereas the bulk of the fruits and vegetables canned by petitioner are grown in California and the operations in which the employees are engaged therefore precede any flow of interstate commerce; (2) in those cases a preponderant portion of the product was shipped in interstate commerce, whereas more than 50 per cent of petitioner's pack remains within the State of California.

We consider these grounds separately. Neither, we submit, affords a valid distinction.

1. THE ACT MAY VALIDLY BE APPLIED TO PREVENT UNFAIR LABOR PRACTICES WHICH OBSTRUCT INTERSTATE COMMERCE IN THE PRODUCTS OF A PLANT WHOSE RAW MATERIALS ARE NOT OBTAINED FROM OUTSIDE THE STATE

Accepting petitioner's contention that there is no movement of materials and supplies to the Oak-

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directly involving enforcement of orders of the Board. *Pratt* v. *Oberman & Co., Inc.*, 89 F. (2d) 786 (C. C. A. 8th); *Wilson & Co., Inc.*, v. *Gates et al.*, 90 F. (2d) 247 (C. C. A. 8th); *General Motors Corp.* v. *Bajork et al.*, 90 F. (2d) 248 (C. C. A. 8th); *Beman et al* v. *Iowa Mfg. Co.*, 90 F. (2d) 249 (C. C. A. 8th); *Lyons et al.* v. *Eagle-Picher Lead Co. et al.*, 90 F. (2d) 321 (C. C. A. 10th); see also *Bowen et al.* v. *James Vernor Co.*, 89 F. (2d) 968 (C. C. A. 6th).

land plant from without the state,[10] it is clear that applicability of the Act, under the *Jones & Laughlin* decision, remains wholly unaffected by this circumstance. In that case the Court made it clear that its decision did not rest upon the conception that the Steel Company's manufacturing operations were carried on in a stream of commerce consisting of raw materials which were brought into the state of production and thereafter resumed their interstate journey in altered form. The Court said:

> The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious actions springing from other sources. * * * That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it" (301 U. S. at 36, 37).

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[10] The Board found that the bulk of the fruits and vegetables canned and shipped by petitioner was grown in California (R. 60). The hominy is obtained from other states (R. 689–90). No testimony was adduced as to the sources of necessary supplies. Supplies ordinarily utilized by a cannery such as petitioner's include cans, belts, valves, discs, sugar, nails, wire, lubricants, labels, knives, pans, kitchen equipment, uniforms, gloves, caps, trucks, truck equipment, chains, gears, pulleys, sprockets, bearings, shipping cases and boxes, glue, paste, paint, ink, lye, sprays, cleansers, sterilizers, and other chemicals (Bd. Exh. 36).

The Court gave "full weight" to the argument of the Steel Corporation that the stream of commerce was broken by the lengthy rest of the materials at the plant and the manufacturing operations to which they were there subjected, but held the contention not relevant to the issue involved (301 U. S. at 41). The Act was explicitly sustained as a regulation not of activities *in* interstate commerce but of activities which are "intrastate in character when separately considered" (p. 37). "* * * the fact that the employees here concerned were engaged in production," the Court stated (p. 40), "is not determinative." The determinative factor was the obstructing effect of industrial strife upon the interstate movement of goods.

In accordance with this ruling the Fourth and Tenth Circuits have held, as did the court below, that the Act is fully applicable to enterprises from whose plants flow a substantial stream of goods into interstate commerce, although there is comparatively little or no antecedent import of raw materials from without the state. *Mooresville Cotton Mills* v. *National Labor Relations Board,* decided January 4, 1938 (C. C. A. 4th); *Lyons et al.* v. *Eagle-Picher Lead Mining Co.,* 90 F. (2d) 321 (C. C. A. 10th). The Ninth Circuit has also reaffirmed its conclusion in the present case, holding the Act applicable to a lumber mill which received no raw materials from without the state. *National Labor Relations Board* v. *Carlisle Lumber Co.,* de-

cided December 13, 1937. There are no contrary decisions.

Petitioner invokes, as bearing upon the issue here presented, numerous decisions dealing with the taxing and regulatory powers of the states. E. g., *Coe* v. *Errol,* 116 U. S. 517; *Kidd* v. *Pearson,* 128 U. S. 1; *Lehigh Valley R. Co.* v. *Pennsylvania,* 145 U. S. 192; *Public Utilities Commission* v. *Landon,* 249 U. S. 236; *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245; *Chassaniol* v. *Greenwood,* 291 U. S. 584. These cases are wholly inapposite. This Court has repeatedly pointed out that state and federal powers with respect to interstate commerce are not correlatives. *Swift & Co.* v. *United States,* 196 U. S. 375, 400; *Stafford* v. *Wallace,* 258 U. S. 495, 525; *Minnesota* v. *Blasius,* 290 U. S. 1, 8; *Townsend* v. *Yeomans,* 301 U. S. 441. Particularly—indeed, necessarily—is this so where, as here, federal power is exerted for the protection of interstate commerce over transactions which in themselves are intrastate. No one has supposed that the decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, could be cited with pertinence upon an issue of the taxing power of the Commonwealth of Pennsylvania.

Petitioner relies upon *Carter* v. *Carter Coal Co.,* 298 U. S. 238, as establishing that the burdening effect of its unfair labor practices upon commerce in its product cannot support federal regulation in the absence of a flow of materials to its plant

from outside the state. In the *Jones & Laughlin* case that decision was strongly pressed upon the Court; and the Court held it not to be controlling. It is likewise not controlling here.

In the *Carter* case a majority of the Court [11] held invalid the labor provisions of the Bituminous Coal Conservation Act. The Court's opinion referred (p. 308) to the Government's contention that interstate commerce in coal was greatly affected by "the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment, and irregularity of production and effect on prices." To this contention the Court replied (pp. 308–309) that "the conclusive answer is that the evils are all local evils over which the federal government has no legislative control"; that "the controversies and evils, which it is the object of the act to regulate and minimize are local controversies and evils affecting local work"; and that "such effect as they may have upon commerce, however extensive it may be, is secondary and indirect." It is manifest from the *Jones & Laughlin* case and companion cases that this language can have no application in cases arising under the National Labor Relations Act. Those decisions establish beyond equivocation that the evils which come from unfair labor

[11] Three members of the Court expressly refrained from expressing any opinion as to the validity of the labor provisions (298 U. S. at 324). The statement to the contrary in the brief for the petitioner (p. 23) is an inadvertence.

practices of employers are not local evils, in the sense of being immune from regulation under that Act, when their effect is to burden and obstruct interstate commerce.

Petitioner, in effect, contends that the *Jones & Laughlin* decision rejected the reasoning of the *Carter* case only to the extent of its application to unfair labor practices which obstruct interstate commerce in products manufactured from raw materials procured outside the State. The reasoning in neither case, however, turned upon the source of the raw materials utilized in the products whose movement in interstate commerce was obstructed. The danger of an obstruction to interstate commerce, and the appropriateness of the means adopted by the Congress to remove it, were the decisive factors in each decision. The differences in the regulatory methods and purposes of the two enactments, as well as in their scope, made it unnecessary for the Court in upholding this Act to overrule the *Carter* decision. The question whether the later decision may have cast doubt upon the earlier likewise need not be considered here.[12] It is

[12] Judge Denman in the court below thought the present case "identical in fact and relevant principle" with the *Carter* case and considered that the *Carter* case had been "overruled" by the *Jones & Laughlin* decision (R. 108–110). We did not take this position in the circuit court of appeals, nor do we here. It may be noted that neither the Fourth Circuit in the *Mooresville* case nor the Tenth Circuit in the *Eagle-Picher Lead Co.* case, *supra*, p. 21, felt called upon to hold the *Carter* case "overruled."

sufficient that the earlier decision clearly does not qualify the later.

The opinion in the *Jones & Laughlin* case is a complete refutation of the petitioner's suggested distinction. The effect of unfair labor practices in burdening and obstructing interstate commerce, whether in raw materials or manufactured products, is the basis of the decision. Neither the fact nor the degree of obstruction to commerce in manufactured products can in reason depend upon the place of origin of the raw materials. And the Court's opinion will be searched in vain for a suggestion that, if obstruction in fact be threatened, the federal authority is powerless to prevent it. Concerning the *Carter* case itself the *Jones & Laughlin* opinion states only that the Court had there been of the opinion that—

> * * * the provisions of the statute relating to production were invalid upon several grounds—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process (301 U. S. at 41).

Neither this statement nor any other statement in the opinion attributes significance to the fact that the bituminous coal industry involved in the *Carter* case occasioned no flow of commerce *into* the state of production.

The question whether the *Carter* case could be distinguished was acute in the *Jones & Laughlin* case. The ready formula for a distinction now offered by petitioner was not there overlooked. On the contrary, the soundness of such a distinction was elaborately discussed by counsel. In these circumstances the Court's opinion can only be regarded as evincing a deliberate judgment that the distinction was unsound. For the Court not merely refrained from accepting it. As before pointed out, the Court expressly stated that Congressional authority "is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce" but extends to the protection of interstate commerce *"no matter what the source of the dangers which threaten it"* (301 U. S. at 36–37). These statements foreclose decisively the contention that unfair labor practices which in fact obstruct interstate commerce—be it commerce in manufactured products, or in raw materials, or in both—are exclusively "local evils over which the federal government has no legislative control."

The "familiar principle" invoked by the Court in the *Jones & Laughlin* case, that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the Congressional power, recognizes no distinction between effects upon incoming or outgoing interstate commerce, or effects upon both. The

principle has received frequent application in decisions under the Sherman Act.[13] There Congressional power has been sustained although the burdening activity was intrastate and the flow of commerce either had not begun or had terminated. *Coronado Coal Co.* v. *United Mine Workers of America,* 268 U. S. 295; *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association,* 274 U. S. 37; *Local 167, Brotherhood of Teamsters* v. *United States,* 291 U. S. 293, 297. Similarly here the obstructive effect of unfair labor practices upon interstate commerce differs in no significant way, whether the commerce affected be outgoing, incoming, or both.

Petitioner can escape the force of the *Jones & Laughlin* decision only by showing either (1) that the effect of unfair labor practices upon outgoing

[13] Inherent differences between a punitive and a protective statute have no bearing upon the identical, direct and substantial relation to commerce required in the application of both. The power to prevent a burden to commerce by appropriate regulation designed to remove its causes follows *a fortiori* from the power to alleviate that burden when it occurs. Cf. *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 556. The report of the Committee on Labor of the House of Representatives said of the Act (H. Rep. 1147, 74th Cong., 1st Sess., at p. 9): "It is believed that the cases which have sustained federal intervention in labor disputes under the anti-trust laws are broad enough to sustain this bill, which is designed to give labor federal protection in the same areas which previously were subjected to federal restraint."

interstate commerce in manufactured products varies in *kind* according to whether the same practices do or do not affect incoming interstate commerce in raw materials, or (2) that the effect upon outgoing commerce is immaterial and that the decisive relationship justifying federal regulation is that with respect to commerce in raw materials. Neither proposition can draw color of authority from the *Jones & Laughlin* opinion or color of reason from the findings of the Congress and the experience upon which they were predicated. If there be power to regulate unfair labor practices affecting incoming commerce in raw materials, there is plainly power to regulate similar practices affecting the same commerce in the state of origin (compare *Carter* v. *Carter Coal Co.*, 298 U. S. at 309–310); nor can a distinction be drawn between outgoing commerce in raw materials and similar commerce in the products of those materials. National concern in the unobstructed flow of interstate commerce extends peculiarly to the nation-wide distribution of local materials and products processed from local materials. The most conspicuous characteristic of the organization of industry on a national scale is a national market. And where interdependence of factory and interstate market exists, that interdependence can scarcely be thought to vary significantly according to whether the place of manufacture be the place of origin of the raw materials, or otherwise. The geographic

fact of concentration of natural resources in particular regions, far from lessening national concern in the industries which spring from those resources, heightens it. The natural, if not necessary, circumstance that such industries are located at the point of concentration of the resources clearly has no decisive weight.

The view which petitioner urges would frustrate one of the great purposes of the commerce power as it is realized in this statute. By removing from the protection of the Act such nationally significant industries as the canning, packing, and preserving of produce, lumbering, quarrying, mining, production of oil and gas, and enterprises engaged in the immediate processing of these resources, it would expose to obstructions of paramount national concern interstate and foreign commerce of tremendous bulk, value, and intrinsic importance.[14] It is apparent that an enterprise so engaged may ship

[14] During 1936 Class I Railways of the United States carried 1,553,474,740 tons of freight, consisting of the products of mines, quarries, and forests. These shipments constituted 62 per cent of the total freight carried by those roads. In this computation are included the following products: coal, coke, iron, copper, lead, zinc, and other ores, sand and gravel, stone, crude petroleum, asphalt, salt, phosphate rock, sulphur, lumber, rosin turpentine, and crude rubber. Excluded are agricultural products, animals and animal products, and manufactures. Interstate Commerce Commission, Bureau of Statistics, *Freight Commodity Statistics, Class I Steam Railways in the United States, 1936*, p. 7.

out of the state in which it is located a product which far exceeds, by every standard, the combined materials and products crossing state lines to and from a manufacturing plant of the type to which this Court has held the Act applicable. Petitioner, therefore, is contending that Congress may protect commerce from the lesser burden but not from the greater, though both are affected by the same form of activity.

To any just conception of the national interest in avoiding disruptions of the national economy, the line of demarcation which petitioner seeks to draw is irrelevant. The coal industry, which petitioner would exclude from the operation of the Act, is a prime example of the very experience which prompted its enactment. Public understanding admits of no distinction between "the paralyzing consequences of industrial war" (301 U. S. at 41) in that industry and in the steel industry; and the Constitution, we submit, requires none. The steel strike of 1919–1920 (*id.* at 43) has its parallels, among others, in the anthracite coal strike of 1901 and the bituminous coal strikes of 1919 and 1922. In the coal fields, no less than in the steel mills, the effect of industrial strife upon interstate commerce is immediate and may be catastrophic (301 U. S. at 41). The coal industry, no less than the steel industry, "is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point" (*id.* at 43).

To ask this Court to distinguish between these two primary industries in terms of the effect upon interstate commerce of unfair labor practices therein is, indeed, to ask it to shut its eyes "to the plainest facts of our national life" (301 U. S. at 41).[15]

2. THE CIRCUMSTANCE THAT THE INTERSTATE SHIPMENTS AFFECTED BY PETITIONER'S UNFAIR LABOR PRACTICES WERE LESS THAN FIFTY PER CENT OF ITS TOTAL PACK IS IMMATERIAL

Petitioner's second argument—that the Act may not be applied here because less than 50 per cent of the total pack is shipped out of California—is likewise without merit. It appears from the statistics supplied by petitioner that during 1935 it shipped in interstate and foreign commerce 627,000 cases of canned goods, a substantial quantity of food by any standard as well as a considerable portion of petitioner's total pack. Petitioner's unfair labor

[15] Petitioner likewise ignores realities in conceiving that the terms of its sales contracts, passing title to the consignee when the goods are delivered by petitioner to a carrier, should determine applicability of the Act. The Friedman-Harry Marks Clothing Company sold its product f. o. b. Richmond, where its plant was located (301 U. S. at 72). In the *Mooresville* case, *supra*, the goods were sold f. o. b. Mooresville, but the Fourth Circuit properly held that "this circumstance is merely incidental to the disposition of the goods in the state of manufacture, and has no relation to the interference with interstate commerce by labor disputes which the statute was designed to prevent." See *Pennsylvania R. Co.* v. *Clark Bros. Coal Mining Co.*, 238 U. S. 456, 465–66, 468; cf. *South Covington and Cincinnati Street Ry. Co.* v. *City of Covington*, 235 U. S. 537, 545.

practices, therefore, have the "close and substantial relation" to commerce recognized in the *Jones & Laughlin* case and the Act may be applied to prevent them (301 U. S. at 37).[16]

In petitioner's plant the same employees prepare and ship both the goods which go to points outside California and those which do not. Concededly, no separation of the employees into those working on goods destined for interstate shipment and those working on goods to be consumed in California is possible. Under these circumstances federal regulation may be applied to petitioner's relations with all of the employees. Compare *Shreveport Case,* 234 U. S. 342; *Minnesota Rate Cases,* 230 U. S. 352, 399; *Southern Railway* v. *United States,* 222 U. S. 20.

Petitioner contends, however, that because its business is "predominantly local," the entire subject of labor relations in its plant is reserved to the

[16] The Government's brief in the *Jones & Laughlin* case suggested to the Court three possible tests of the direct and necessary effect of recurring industrial strife upon interstate commerce: (a) such strife burdens or obstructs commerce when it occurs in an enterprise which lies in a stream or flow of commerce; (b) such strife prevents a substantial proportion of all the commerce in a particular commodity; or (c) such strife prevents interstate sales or shipments of a substantial volume of goods which would otherwise move in commerce. The Court laid the first aside (*supra*, pp. 20–21), could not have accepted the second (the Friedman-Harry Marks Clothing Company produced less than one half of one per cent of the men's clothing manufactured in the United States (301 U. S. at 87)) and, we submit, clearly adopted the third.

control of the state. Judge Wilbur, dissenting in the court below, accepted this argument (R. 131) and erected what Judge Denman termed "an academically arbitrary 50% as the boundary line between the two jurisdictions" (R. 115). The difficulties and absurdities to which the attempted application of such a rule of thumb would lead were concisely stated in Judge Denman's opinion (R. 115):

> The suggestion * * * ignores the practical necessities of industry. Shall it be 50 per cent in volume or price? What happens when for the first 6 months of the year 60 per cent is exported and 40 per cent is domestic, and for the rest of the year the percentages are reversed? Does the Federal control end on June 30th? On which is the burden of proof, the state interest or the Federal? How unfair may be the competition between the industry producing the 60 per cent for export under Federal regulation and its competitor with 40 per cent under state regulation or no regulation at all!
>
> Industry and business cannot thrive, in some cases it could not exist, in the uncertainty of such an abstract mathematical solution of the problem.[17]

[17] Other problems are suggested by the fact that an enterprise producing a variety of products may ship into interstate or foreign commerce a majority of some products and a minority of others. In 1935 petitioner shipped out of the state 85 per cent of the peaches, pears, apricots, spinach, and asparagus canned by it (R. 687–688, 699).

Had petitioner produced only the large amount of goods sent out of the state, it would not be open to question that the requisite "close and substantial" relation to interstate and foreign commerce was present. The effect of a stoppage of operations upon commerce is no less direct and no less substantial because, in addition, petitioner packed a somewhat larger quantity which did not leave the state. Those local sales assuredly afford no justification for granting petitioner immunity from the Act while holding subject to it smaller and competing concerns whose shipments are predominantly interstate.

The proposed percentage test is a transparently gratuitous gloss upon the statute. Nor has it any foundation in the Constitution. A review of the decisions in which this Court has sustained federal regulation of intrastate activities because of their deleterious effects upon commerce demonstrates that the validity of such legislation has never turned upon whether the interstate commerce affected was greater in quantity than the intrastate transactions which were necessarily subjected also to the regulation imposed. Clearly, protection to interstate commerce need not be withheld because in affording that protection local commerce is also safeguarded.

Thus, in passing upon federal power to ameliorate burdensome effects upon interstate commerce through regulation of discriminatory intrastate railroad rates, this Court has not inquired whether

the commerce protected surpassed in value or importance the intrastate trade necessarily affected. *Shreveport Case,* 234 U. S. 342, 351, 355. If the intrastate rates bear a "close and substantial relation" to interstate commerce and the two "are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field." (*Ibid.,* at pp. 351–352.) Similarly, the validity of federal regulation designed to obtain for interstate carriers returns from their intrastate traffic which are reasonably proportionate to those accruing from interstate carriage has not been regarded as depending upon which type of business preponderated. *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.,* 257 U. S. 563; *Florida* v. *United States,* 282 U. S. 194.[18]

[18] Examples of the principle may be multiplied. Applicability of federal legislation restricting the hours of labor of railroad employees engaged in interstate commerce is dependent neither upon a dominance of interstate traffic on the lines of the carrier nor upon the respective number of hours spent by the employees on interstate and intrastate hauls. Cf. *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612, 616–619. And federal power comprehends a requirement that all locomotives and cars "used on any railroad engaged in interstate commerce" be equipped with safety appliances, without regard to whether a major portion of the traffic carried is interstate. Cf. *Southern Railway* v. *United States,* 222 U. S. 20, 26–27; *Moore* v. *Chesapeake & Ohio Ry. Co.,* 291 U. S. 205, 213–214.

In cases arising under the Sherman Act, the Court likewise has never treated as material the comparative percentage of interstate and intrastate transactions affected by the illegal activity. Compare *Loewe* v. *Lawler,* 208 U. S. 274, 304; *Bedford Cut Stone Co. et al.* v. *Journeymen Stone Cutters' Association,* 274 U. S. 37, 41; *Coronado Coal Co. et al.* v. *United Mine Workers of America,* 268 U. S. 295, 308. On the contrary the Court has repeatedly emphasized that the substantiality of the effect upon interstate commerce, or the intention of the actors with respect to such commerce, is controlling.[19] *United Mine Workers of America et al.* v. *Coronado Coal Co. et al.,* 259 U. S. 344,

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Compare, also, the following cases in which state courts have held the Federal Employers' Liability Act applicable despite a dominance of intrastate commerce: *Western Ry. of Alabama* v. *Mays,* 197 Ala. 367, 72 So. 641; *Lindley* v. *Wabash Ry. Co.,* 120 Neb. 195, 231 N. W. 812, 815, certiorari denied, 283 U. S. 863.

[19] The approach of the lower federal courts has been similar. In *United States* v. *Workingmen's Amalgamated Council of New Orleans,* 54 Fed. 994 (C. C. E. D. La.), an injunction issued under the Sherman Act against a general strike, including a strike of transportation workers, on the ground that "one of the intended results * * * was the forced stagnation of all the commerce which flowed through New Orleans." There was no inquiry as to the comparative effect on interstate and intrastate trade. The statute has been applied to industrial boycotts without mention of what proportion of the business done by the manufacturer at whom the boycott was directed consisted of interstate trade. *Irving* v. *Neal,* 209 Fed. 471; *Boyle* v. *United States,* 259 Fed. 803; *Columbus Heating & Ventilating Co.* v. *Pittsburgh Building Trades Council et al.,* 17 F. (2d) 806 (W. D. Pa.).

411; *Industrial Association* v. *United States,* 268 U. S. 64, 81; cf. *Coronado Coal Co. et al.* v. *United Mine Workers of America,* 268 U. S. 295, 308–310; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457; *International Organization, United Mine Workers et al.* v. *Red Jacket Consolidated Coal & Coke Co.,* 18 F. (2d) 839, 845 (C. C. A. 4th). There is no indication that if such a substantial effect on interstate commerce is shown, the effect on intrastate commerce is of any importance. Compare *Local 167, International Brotherhood of Teamsters* v. *United States,* 291 U. S. 293, 299–300. Thus, in *Swift & Company* v. *United States,* 196 U. S. 375, 396–397, the Court, in sustaining an injunction issued on demurrer to the bill, said:

> Although the combination alleged embraces restraint and monopoly of trade within a single State, its effect upon commerce among the States is not accidental, secondary, remote, or merely probable. On the allegations of the bill *the latter commerce no less, perhaps even more, than commerce within a single State is an object of attack.* [Italics supplied.]

The uncertainty, engendered by absence of a specific allegation concerning the respective amounts of each type of commerce obstructed or sought to be obstructed, was not deemed determinative of federal power, where it was apparent from the bill

that interstate commerce of substantial bulk and importance was the object of attack.

The argument now put forward that federal power, as exercised in this Act, must be measured by a novel and arbitrary 50 per cent test appears to be prompted solely by fear lest the states be left "only the empty hull of government" (R. 125). This fancied menace to our Federal Union is baseless. The power to protect interstate commerce is exercised in fulfillment, not in denial, of our federal form of government. The power is co-extensive with the commerce it protects; the extensiveness of that commerce is a warrant for the Act's application, not for its limitation. Nor has the Act, in any view, the pervasiveness imputed to it. The standard of a close and intimate relation to interstate commerce, excluding on its face labor practices in hosts of enterprises, cannot be said to be framed in disregard of the constitutional principle of division of governmental power.

The Act affords an avenue open in each case for consistent consideration of the question whether, in the light of the relation of industrial strife to interstate or foreign commerce, its application is justified.[20] *National Labor Relations*

[20] On the facts here presented, Judge Haney's observation that the effect of unfair labor practices upon interstate commerce would be "direct and immediate" if that commerce consisted of but one per cent of the goods produced (R. 120–121) was not necessary to the decision.

Board v. *Jones & Laughlin Steel Corporation,* 301 U. S. at 32, 37. The administrative procedure provided by the Congress serves to confine the Act's application rather than to extend it to its maximum possible bounds. The varied and often complex questions of administrative and constitutional jurisdiction which may be presented cannot successfully be solved in advance by singling out one element—a specific percentage by volume of interstate shipments—as controlling. The effect of industrial strife in the particular enterprise upon interstate and foreign commerce, as shown not only by the amounts, absolute and relative, but by the continuity of its interstate shipments; the relationship of that enterprise to the industry of which it is a part; and the characteristic organization of the industry as a whole may all be relevant factors for administrative consideration, subject to judicial scrutiny.

In preference to reliance upon this process, as contemplated by the Congress, petitioner invites this Court, in anticipation of administrative indiscretion, to invent a limiting rule of thumb. Compare *Myers* v. *Bethlehem Shipbuilding Corporation,* decided January 31, 1938. The dangers implicit in this invitation far exceed, in imminence and gravity, those which it is alleged must be escaped. The Court is asked, without warrant in the Act, to lay down a hard and fast rule which is incapable of sensible administration and

whose only possible persuasiveness derives from its application to other cases than the one before the court. It is asked to do so without knowledge of the facts upon which the ruling is based and without consideration of the intricacies of interstate and foreign commerce. It is asked to lay down a rule which, as here applied, would bring into question the very principle of the supremacy of federal power itself.

The doctrine advocated by petitioner would remove from federal protection interstate and foreign commerce of vast bulk and intrinsic importance—all of such commerce carried on by persons or firms which happen to be engaged in a slightly larger percentage by volume of intrastate business. There is no constitutional justification for such shackling of the federal control over interstate and foreign commerce. The Congress is granted power to regulate—which means to protect—all interstate commerce, not merely selected portions thereof. The intermingling of intrastate and interstate transactions results, not in the disappearance of federal power, but in its extension to the inextricable transactions which are intrastate. To hold otherwise, as this Court pointed out in the *Shreveport Case,* 234 U. S. 342, would be to deny the constitutional mandate that "this Constitution and the laws of the United States * * * made in pursuance thereof * * * shall be the supreme law of the land."

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1937
No. 536.

SANTA CRUZ FRUIT PACKING CO.

vs.

NATIONAL LABOR RELATIONS BOARD,

BRIEF OF H. W. O'MELVENY AND WALTER K. TULLER (LOUIS W. MYERS, OF COUNSEL) IN SUPPORT OF THE PROPOSITION THAT THE NATIONAL LABOR RELATIONS BOARD HAS NO JURISDICTION OVER THE RELATIONS BETWEEN PETITIONER AND ITS EMPLOYEES.

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PAGE

SUBJECT INDEX.

PAGE

The Wagner Act decisions..... 32

Those who framed and those who adopted the Constitution intended and understood that this power was reserved to the several states..... 37

The rule contended for by the Government would result in constant clashes of jurisdiction..... 43

Conclusion 45

TABLE OF AUTHORITIES CITED.

CASES.

	PAGE
American Mfg. Co. v. St. Louis (1919), 250 U. S. 459	16
Capital City Dairy Co. v. Ohio (1902), 183 U. S. 238	13
Carter v. Carter Coal Co., 298 U. S. 238	23, 25, 26, 32, 35, 37, 45
Champlin Refining Co. v. Commission (1932), 286 U. S. 210	21
Chassaniol v. Greenwood (1934), 291 U. S. 584	22
Chicago Board of Trade v. Olsen, 262 U. S. 1	34, 35
Crescent Cotton Oil Co. v. Mississippi (1921), 257 U. S. 129	16
Coe v. Errol (1885), 116 U. S. 517	10
Cornell v. Coyne (1904), 192 U. S. 418	13
Delaware etc. R. R. v. Yurkonis (1915), 238 U. S. 439	14
Diamond Glue Co. v. U. S. Glue Co. (1903), 187 U. S. 611	13
Hammer v. Dagenhart (1917), 247 U. S. 251	15
Heisler v. Thomas Colliery Co. (1922), 260 U. S. 245	17
Industrial Assn. United States (1925), 268 U. S. 64	19
Kidd v. Pearson (1888), 128 U. S. 1	11
Oliver Iron Co. v. Lord, 262 U. S. 173	18
Schechter Poultry Co. v. United States, 295 U. S. 495	23, 25, 26, 35
South Carolina v. United States, 199 U. S. 437	40
Stafford v. Wallace, 258 U. S. 495	34, 35
Swift v. United States, 196 U. S. 375	34, 35
Utah Power & Light Co. v. Pfost (1932), 286 U. S. 165	20
Veazie v. Moor, 55 U. S. 567	9
United Leather Workers v. Herkert (1924), 265 U. S. 457	18
United States v. Knight Co. (1895), 156 U. S. 1	12, 14

BOOKS.

Ford, Writings of Thomas Jefferson, Vol. IV, p. 285	42
The Federalist Papers, No. XVII, written by Hamilton	38
The Federalist Papers, No. XLII, written by Madison	38
The Federalist Papers, No. XLIV, written by Madison	39
United States Law Week for November 23, 1937, p. 14	44

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PAGE

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1937
No. 536.

SANTA CRUZ FRUIT PACKING CO.

vs.

NATIONAL LABOR RELATIONS BOARD,

BRIEF OF H. W. O'MELVENY AND WALTER K. TULLER (LOUIS W. MYERS, OF COUNSEL) IN SUPPORT OF THE PROPOSITION THAT THE NATIONAL LABOR RELATIONS BOARD HAS NO JURISDICTION OVER THE RELATIONS BETWEEN PETITIONER AND ITS EMPLOYEES.

This case presents the question whether the Federal Government or the State has jurisdiction over the labor relations of an employer who manufactures a product within the State out of materials produced within the State, with the expectation that a considerable portion of the manufactured product will thereafter be shipped in interstate commerce. Clearly both governments cannot have jurisdiction. The question transcends in importance any private controversy. Its correct determination involves, as we conceive it, nothing less than the preservation of our federal system as established by the Constitution.

A determination that the Federal Government has jurisdiction would result in extending the power of the Federal Government over almost all human activities and, conversely, in so emasculating the powers of the States as practically in effect to destroy their powers and, likewise, to destroy the federal system.

The powers of the Federal Government, being only those that are delegated to it by the Constitution, and all others being reserved to the State (both by the very nature of the Constitution and by the express provisions of the Tenth Amendment), it is clear that if the Federal Government has any power over this matter it must arise from the provisions of article I, section 8, subdivision (3) of the Constitution, which provides that the Congress shall have power

> "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

We suppose no one will contend that manufacture is commerce among several States, or indeed commerce at all. It would seem that the claim that the Federal Government has jurisdiction and power would have to rest on some such argument as this: That if the business of petitioner should cease or be substantially disturbed, less goods will thereafter move in interstate commerce, and that this so *affects* interstate commerce that it is sufficient to give the Federal Government jurisdiction over the manufacturer and his relations with his employees. This argument proves too much—so much, indeed, that if adopted it would (as this Court has frequently pointed out) for all practical purposes destroy the federal system established by the Constitution. There is hardly a human activity that does not

"affect" interstate commerce in the same way. Examples readily occur to the mind. A very large percentage of the cotton, corn, wheat, cattle and livestock, vegetables—indeed almost every agricultural product—is raised with the expectation that all or a large part of the crop will be, and it is in fact, shipped in interstate commerce or foreign commerce. If the operations of the farmer are interrupted or stopped, less goods will move in interstate commerce. Can it be contended that this fact takes away and destroys the right of the State to regulate, and confers upon the Federal Government the right to regulate, the relations between the farmer and his employee who plows the ground, who sows the seed, or his employee who cultivates or irrigates the growing crops, or his employee who harvests his crop after it is matured? It would seem clearly not. Yet, we submit, the principle involved is identical. Much of the coal, copper, iron, zinc, silver and indeed nearly all other metals that are mined in this country are mined with the expectation that they will, and they in fact do, thereafter move in interstate commerce. If the operations of mining are interrupted or cut off altogether, less of such products will thereafter move in interstate commerce. To this extent it may be said that, as a philosophical matter, the mining "affects" interstate commerce. But can it be held that this takes away from the States and gives to the Federal Government the power to regulate the labor relations between the mine operator and his employees? The principle is identical. Most of the timber that is cut in our forests is cut with the expectation that it will and it does, in fact, thereafter move in interstate commerce. Can it be held that this is sufficient to deprive the States of and give to the Federal Government the power to

regulate the relations between the timber owner and his employees who cut the trees or saw them in his sawmill? The principle is identical. We might extend these illustrations at great length. The fact is that the overwhelming majority of everything that is produced in the country, whether on the farms, in the mines, in the shops and factories of every kind, is produced with the expectation that all or a substantial portion will, and in fact it does, thereafter move in interstate commerce. To hold that the Federal Government has jurisdiction to regulate labor relations or other matters concerned in the *production* would be to destroy almost completely the powers of the States, and to make the Federal Government one of well-nigh unlimited power.

If the fact that the interruption or cessation of a particular activity will lessen the volume of goods which will thereafter flow in interstate commerce is sufficient to deprive the States of the power to regulate that activity and confer it upon the Federal Government, then it would seem that it would apply equally to the converse situation of that which we have been discussing, that is, to activities which use, consume or deal in goods that *have moved* in interstate commerce. If those activities cease, then less goods will thereafter move in interstate commerce. Thus grocery stores deal in tea, coffee, spices, sugar, rice, flour, cocoa, chocolate, and scores or hundreds of articles which are not produced or manufactured in the State, but are shipped in from foreign countries or from other States. If the operations of the store are interrupted or stopped, the result will be that a lesser volume of these articles will thereafter move in interstate commerce. But will it be contended that this takes away from the States and confers upon the Federal Government the power to regu-

late the operations of the grocery stores of the nation and the relations between the grocer and his employees? The principle, we submit, is identical. The same situation prevails in almost every form of merchandising. The list of illustrations to which the same rule would apply might be extended almost indefinitely. It would cover not merely every form of business, but even the professional man. The lawyer buys books and stationery and furniture and many other items that are manufactured in other states and are shipped in interstate commerce. If his operations cease it will result in less volume of goods moving in interstate commerce. The lawyer also renders indispensable services to the merchant, farmer and manufacturer. By ceasing to render these services, the activities of those persons might be interrupted and the future volume of interstate commerce diminished. The doctor and the dentist buy books and surgical and dental instruments and many other things which, likewise, have moved in interstate commerce. Does this fact give to the Federal Government the power to regulate them and their relations with their employees? Indeed, every individual does, and of necessity must, buy clothing and food and many other articles which have moved in interstate commerce—and if he ceases to buy them the volume of goods thereafter moving in interstate commerce will be lessened. Does this give to the Federal Government the power to regulate the individual so that he will continue to buy such goods, to the end that the volume of interstate commerce shall not thereafter be lessened?

It would seem that to ask these various questions is to answer them. If the constitutional system of dual sovereignty of State and Nation, each supreme within its own sphere, is to be maintained, then it must continue

to be held, as this Court has consistently held from the relatively early days of the Republic, that the Federal Government does *not* have power to regulate these matters, but that such power is lodged exclusively in the several States.

This Court has declared time and time again that to hold that the Federal Government has jurisdiction to regulate a particular activity because the interruption or cessation of that activity would result in lessening the volume of goods thereafter moving in interstate commerce, would be to destroy the federal system and would be violative both of the spirit and the letter of the Constitution. It has held time and time again for well-nigh a century that the fact that goods are produced with the expectation or intention that they will thereafter move in interstate commerce, and do so move in interstate commerce, does *not* deprive the States of jurisdiction to regulate all the various matters connected with production and does *not* confer jurisdiction upon the Federal Government. This principle has become, both by the terms of the Constitution itself and by this long line of decisions, a part of the very framework of our constitutional system. To overturn it would be to overthrow that system—to create a well-nigh absolute national government, with the States mere subservient territorial subdivisions, exercising only such privileges as might be conferred by the grace of the Congress.

We have no desire to burden the Court with an extensive review of all its previous decisions, or even with most of them, which have declared and enforced this principle. But some of the cases are so directly in point, and the reasoning is so compelling, that we trust it will not be amiss to invite attention to them.

In 1852, in the case of *Veazie v. Moor*, 55 U. S. 567, the court was considering the right of the State to grant the privilege of exclusive navigation to the upper part of the Penobscot River, which lies entirely within that State. The lower part of the river was closed by four dams erected for manufacturing purposes. The court held that the State had the power, and that a license from the United States to carry on "coasting trade" did not entitle a vessel to navigate the upper waters of the river. In considering the question whether the State or the Federal Government had jurisdiction of the subject-matter, this Court said:

> "* * * Commerce with foreign nations must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately, or at some stage of their progress, must be extra-territorial. The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a polity and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community. Nor can it be properly concluded that, because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase *foreign commerce, or fairly implied in any investiture of the power to regulate such commerce.* A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations, the results of which may

> not become the subjects of foreign commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several States, towards an ultimate destination, like the one above mentioned. * * *"

(The italics in all quotations are supplied unless otherwise noted.)

In *Coe v. Errol* (1885), 116 U. S. 517, it was claimed that logs cut and intended for exportation to another State were protected by the interstate commerce clause of the Federal Constitution. The court overruled this contention. Among other things it said that when duties or imposts are laid on exports or imports from one State to another, "it cannot be doubted that such an imposition would be a regulation of commerce among the States and, therefore, void as an invasion of the exclusive right of Congress". (P. 526.) But the court held that the interstate commerce clause did not come into effect *until actual transportation commenced*. Among other things the court said:

> "* * * What we have already said, however, in relation to the products of a State intended for exportation to another State will indicate the view which seems to us the sound one on that subject, namely, that such goods do not cease to be part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, *until they have been shipped or entered with a common carrier for transportation* to another State, or have been started upon such transportation in a continuous route or journey. We think that this must be the true rule on the subject. It seems to us untenable to hold that a crop or a herd is exempt from taxation

merely because it is, by its owner, *intended* for exportation. If such were the rule in many States there would be nothing but the lands and real estate to bear the taxes. Some of the Western States produce very little except wheat and corn, most of which is intended for export; and so of cotton in the Southern States. Certainly, as long as these products are on the lands which produce them, they are part of the general property of the State. And so we think they continue to be until they have entered upon their final journey for leaving the State and going into another State. * * * The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation." (Pp. 527-8.)

In *Kidd v. Pearson* (1888), 128 U. S. 1, the question presented was whether a state had power to prohibit the manufacture of intoxicating liquor within its borders when such liquor was intended to be, and would in fact be, shipped in interstate commerce. The claim was that since the manufactured product was intended to be shipped in interstate commerce, the effect of allowing the State to prohibit its manufacture would be to *lessen the volume* of interstate commerce; hence that this fact deprived the State of jurisdiction and conferred it upon the Federal Government. This Court overruled this contention as being without merit. The Court said:

"* * * If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the

future, it is impossible to deny that it would also include *all productive industries that contemplate the same thing.* The result would be that Congress would be invested, to the *exclusion* of the States, with the power to regulate, not only *manufactures,* but also agriculture, horticulture, stock raising, domestic fisheries, mining—*in short, every branch of human industry.* For is there one of them but does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress, and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—*interests which in their nature are and must be, local in all the details of their successful management.*" (P. 21.)

United States v. Knight Co. (1895), 156 U. S. 1, involved the question whether the provisions of the Sherman Act could constitutionally apply to a manufacturer of sugar located within a State, whose operations were confined to that State, even though the manufactured product was shipped in interstate commerce. The Court held it could not. Among other things it said:

"Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it." (P. 12.)

Capital City Dairy Co. v. Ohio (1902), 183 U. S. 238, involved the validity of the State's regulation of the manufacture of oleomargarine. The manufacturing took place within the State, but the product was intended to be, and in fact was, shipped in interstate commerce. In overruling the claim that the State statute amounted to a regulation of interstate commerce the Court said:

> "The contention that the statutes in question are repugnant to the commerce clause of the Constitution is manifestly without merit. All the acts of the corporation which were complained of related to oleomargarine manufactured by it in the State of Ohio, in violation of the laws of that State, and therefore operated on the corporation within the State and affected the product manufactured by it before it had become a subject of interstate commerce." (P. 245.)

In *Diamond Glue Co. v. U. S. Glue Co.* (1903), 187 U. S. 611, the State statute imposed certain regulations and required certain fees for doing a business within the State. The complainant asserted that this was unconstitutional as being a burden on interstate commerce because it was engaged in manufacturing glue which was intended to be and would be moved and sold in interstate commerce. The court held that this did not deprive the State of power to regulate the manufacturing business.

Cornell v. Coyne (1904), 192 U. S. 418. In this case cheese was manufactured within the State expressly for export. The State where it was manufactured attempted to tax it. The owner contended that since it was intended for export, such regulation by the State would constitute

a burden on interstate and foreign commerce and was beyond its jurisdiction. The Court overruled this contention. It quoted (p. 429) with approval from the *Knight* case, *supra,* the following:

> "Commerce succeeds to manufacture, and is not a part of it. * * * The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce."

In *Delaware etc. R. R. v. Yurkonis* (1915), 238 U. S. 439, plaintiff was injured while mining coal. The coal was intended to be shipped in interstate commerce. Plaintiff contended that this gave the Federal Government jurisdiction and so brought him within the provisions of the Federal Employers' Liability Act. The Court unanimously held his contention without merit, saying, among other things:

> "The averments of the complaint as to the manner of the receiving of the injury by plaintiff showed conclusively that it did not occur in interstate commerce. The mere fact that the coal might be or was intended to be used in the conduct of interstate commerce after the same was mined and transported did not make the injury one received by the plaintiff while he was engaged in interstate commerce. The injury happening when plaintiff was preparing to mine the coal was not an injury happening in interstate commerce, and the defendant was not then carrying on interstate commerce, facts essential to recovery under the Employers' Liability Act." (Pp. 444-5.)

In *Hammer v. Dagenhart* (1917), 247 U. S. 251, Congress had passed a statute prohibiting transportation in interstate commerce of goods made in a factory where children had been employed more than a certain period of time. The contention was made that the act was unconstitutional as attempting to regulate manufacture, which was within the power of the state and not the federal government. The court held the statute unconstitutional. We shall not quote much from the extensive discussion, but do call attention to the following:

> "Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, *is a matter of local regulation.*" (P. 272.)

Mr. Justice Holmes delivered a dissenting opinion concurred in by three other justices, but even this dissenting opinion strengthens the position we take in the case at bar. The dissenting justices expressly recognize that the principles for which we contend are both sound and settled law. They recognize that Congress had no power to regulate labor conditions involved in manufacture. Their dissent was based upon the contention that *after manufacture is completed* and the finished product *starts moving* in interstate commerce, the jurisdiction of the federal government then attaches. Thus on page 277 Mr. Justice Holmes says:

> "The objection urged against the power is that the States have exclusive control over their methods of production and that Congress cannot meddle with them, and taking the proposition in the sense of direct intermeddling *I agree to it and suppose that no one denies it.*"

American Mfg. Co. v. St. Louis (1919), 250 U. S. 459. A city ordinance required the payment of a license tax, computed upon the amount of the sales of goods so manufactured, as a condition to manufacture. The complainant manufactured goods intended to be shipped in interstate commerce. It claimed that this brought its manufacturing operations within the power of Congress and therefore that they were beyond the power of the state. The court unanimously overruled this contention, holding that the manufacturing operations were subject solely to state regulation, even though the manufactured product was intended to be shipped in interstate commerce.

Crescent Cotton Oil Co. v. Mississippi (1921), 257 U. S. 129. Mississippi had passed a law prohibiting any corporation from owning or operating a cotton gin where such corporation was interested in the manufacture of cottonseed oil or cottonseed meal. Plaintiff operated cotton gins in Mississippi and intended to and did ship out of the state to a cottonseed mill in another state all the cotton seed which it purchased in connection with its ginning operations. It contended that the statute of the state was unconstitutional as to it on the ground that it constituted a burden on or interference with interstate commerce. The court unanimously held the statute valid. The opinion was written by Mr. Justice Clark. Among other things it said (after stating that ginning is a short but important step in manufacturing):

> "But that manufacture is not commerce was held in Kidd v. Pearson, 128 U. S. 1 (and a number of other cases cited), and the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce (citing decisions)

> * * * and, under the cases cited, it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power." (P. 136.)

Heisler v. Thomas Colliery Co. (1922), 260 U. S. 245, involved the validity of a tax levied by the State of Pennsylvania on anthracite coal. All the coal of this kind is found in Pennsylvania, so that it had a monopoly on it. Most of the coal was shipped to and used in other states. The attorneys general of a number of other states to which the coal was shipped appeared and attacked the tax as being a burden upon interstate commerce. The court unanimously overruled the contention and held that the matter was properly within the jurisdiction of the state. We quote the following, beginning on page 259, where the court stated that the contention is this:

> "It is that the products of a state that have, or are destined to have, a market in other states, are subjects of interstate commerce, though they have not moved from the place of their production or preparation."

The court then disposed of this contention in language every word of which is particularly pertinent to the case at bar. We quote as follows:

> "The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground.

> The result would be curious. *It would nationalize all industries;* it would nationalize and withdraw from state jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other states, at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are, in varying percentages, destined for and surely to be exported to states other than those of their production." (P. 260.)

Oliver Iron Co. v. Lord, 262 U. S. 173, was a very similar case applying to iron ore. Practically all of the iron was intended for, and was in fact shipped in, interstate commerce. The court held unanimously that it was subject to local regulation and not to federal regulation.

In *United Leather Workers v. Herkert* (1924), 265 U. S. 457, the lower court had granted an injunction against certain striking employees and labor unions, on the ground that their action violated the Sherman Act. The goods manufactured by the employer were to a large extent shipped in interstate commerce. This Court reversed the decree of the lower court, holding that the matter was local and not federal. We quote briefly from the opinion as follows:

> "The sole question here is whether a strike against manufacturers by their employees, intended by the strikers to prevent, through illegal picketing and intimidation, continued manufacture, and having such effect, was a conspiracy to restrain interstate com-

merce under the Anti-Trust Act because such products when made were, to the knowledge of the strikers, to be shipped in interstate commerce to fill orders given and accepted by would-be purchasers in other states, in the absence of evidence that the strikers interfered or attempted to interfere with the free transport and delivery of the products when manufactured from the factories to their destination in other States, or with their sale in those States.

"We think that this question has already been answered in the negative by this Court." (P. 464.)

The court then reviewed a number of authorities, many of which we have cited, and concluded:

"We concur with the dissenting judge in the Circuit Court of Appeals, when, in speaking of the conclusion of the majority, he said: 'The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction provided any appreciable amount of its product enters into interstate commerce.'" (P. 471.)

Industrial Assn. v. United States (1925), 268 U. S. 64. This again involved the subject of labor relations between employer and employee. A number of building contractors and dealers in building materials in San Francisco combined to established an open shop. The lower court held that this violated the Anti-Trust Act. This Court unanimously reversed. It held that the matter was purely local. This was held true in spite of the fact that one of the materials affected by the agreement was plaster and that the plaster used was to a large extent produced in other states and shipped into California. Stoppage of the use of such plaster would, of course, lessen the volume of

it which would thereafter move in interstate commerce. The court held that this was immaterial. The plaster had come to rest in California before it became subject to the agreement. The court said:

> "But here, the delivery of the plaster to the local representative or dealer was the closing incident of the interstate movement and *ended* the authority of the federal government under the commerce clause of the Constitution. What next was done with it, was the result of new and independent arrangements." (P. 79.)

The decision is too long to quote. We may, however, invite attention to the following appearing at the bottom of page 82:

> "The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation,—for building is as essentially local as mining, manufacturing or growing crops,—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act."

Utah Power & Light Co. v. Pfost (1932), 286 U. S. 165, involved a situation much stronger for the claim of Federal jurisdiction than the case at bar. The complainant was engaged in generating electricity and transmitting it over wires to consumers in another state. The state where the generating plant was located levied a license tax on the manufacture or generation of this electrical energy. Its validity was attacked on the ground that it burdened interstate commerce. This court unanimously

overruled the contention. We quote briefly from the opinion as follows:

> "* * * On the contrary, the generator and the transmission lines perform different functions, *with a result comparable,* so far as the question here under consideration is concerned, to the *manufacture* of physical articles of trade and their *subsequent shipment* and transportation in commerce. * * *
>
> "* * * We are satisfied, upon a consideration of the whole case, that the process of generation is as essentially local as though electrical energy were a physical thing; and to that situation we must apply, as controlling, *the general rule that commerce does not begin until manufacture is finished, and hence the commerce clause of the Constitution does not prevent the state from exercising exclusive control over the manufacture.* * * *
>
> "Without regard to the apparent continuity of the movement, appellant, in effect, is engaged in *two* activities, not in one only. *So far as it produces electrical energy in Idaho, its business is purely intrastate, subject to state taxation and control."* (Pp. 180-182.)

Here it will be noted that the court held that the two functions (namely, generation of electricity, and its distribution in other states) were separate functions, the former subject to local regulation, the latter to federal regulation. They were even more closely related than are the functions of manufacturing products and later distributing them.

Champlin Refining Co. v. Commission (1932), 286 U. S. 210. In this case the State of Oklahoma imposed restrictions upon the production of oil intended for ship-

ment in interstate commerce. Its validity was attacked on the ground that this imposed a burden on interstate commerce. This court unanimously overruled the contention and held that the production was local and subject to state regulation only, even though the product was intended for shipment in interstate commerce. We quote from page 235:

> "It is clear that the regulations prescribed and authorized by the Act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation and therefore *is not a part of interstate commerce even though the product obtained is intended to be and in fact is immediately shipped in such commerce.*"

Chassaniol v. Greenwood (1934), 291 U. S. 584. In this case a city in Mississippi laid a tax upon each person buying or selling cotton within the city. Complainant was engaged in buying cotton for shipment outside the state. This court held that this did not make it subject to federal regulation. We quote briefly from page 587 as follows:

> "Ginning cotton, transporting it to Greenwood, and warehousing, buying and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce. Hence those engaged in performing any such local function may be subjected to an occupation tax, just as the property used, or processed, by them may be subjected to a property tax."

In two recent and carefully considered cases this Court has reannounced and enforced the same principle. The cases referred to are *Schechter Poultry Co. v. United States,* 295 U. S. 495, and *Carter v. Carter Coal Co.,* 298 U. S. 238. They involved applications of the principle to two converse situations; one where the party was dealing in goods that *had* moved in interstate commerce but where the movement had ceased before he dealt with them; the other where coal was mined with the purpose and intent of *thereafter* shipping it in interstate commerce, but where the movement had not yet commenced. Both cases involved a state of facts where interruption or cessation of the business would lessen the volume of goods that would thereafter move in interstate commerce. In both cases it was extensively and elaborately argued this was sufficient to give the Federal Government jurisdiction. In both cases this Court held that this fact did not give the Federal Government jurisdiction or power to regulate the business or the *labor relations* between the employer and his employees. It is submitted the decisions in these two cases, as well as the decisions in the cases heretofore referred to, establish the rule that is controlling in the case now at bar.

Since these two decisions are so recent and since nearly all the present justices participated therein, we assume it is unnecessary to quote extensively from the elaborate and carefully considered opinions that were rendered. We may, however, recall that in the *Schechter* case, page 546, this Court again pointed out, as it has so often done in the past that

> "If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the

> federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the federal government."

And on page 548 (after citing with approval a number of decisions, including several we have heretofore reviewed) it said:

> "While these decisions related to the application of the federal statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government."

In the concurring opinion of Mr. Justice Cardozo, joined in by Mr. Justice Stone, it is said, at page 554:

> "There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our federal system."

It is submitted that the same principle is controlling in the case at bar. The two cases are simply the converse of each other—the opposite sides of the same shield. In both there is involved a local business. One deals with a commodity or product before it enters interstate commerce; the other after it has ceased its movement in interstate commerce. In both the claim of federal right to

regulate was based upon essentially the same contention on which it must be based in the case at bar.

The opinions in the *Carter Coal* case are so elaborate that we shall not make any extensive quotations. We may, however, invite attention to the fact that the Court again declared and applied the principle so often declared in the past

> "That commodities produced or manufactured within a state are intended to be sold or transported outside the state does not render their production or manufacture subject to federal regulation under the commerce clause." (P. 301.)

It pointed out that in principle there is no difference between the *Schechter* case and the *Carter* case. (See page 309.) The case now at bar seems clearly to fall within the same principle. In the concurrent opinion of the Chief Justice it was pointed out that to apply the rule contended for by the government would enable Congress to

> "assume control of virtually all the activities of the people to the subversion of the fundamental principle of the Constitution",

and that for the Court to adopt the government's claim to jurisdiction would be

> "for the Court to amend the Constitution by judicial decision". (Pp. 317-18.)

As we read the opinion of the learned dissenting Justices, all of whom had concurred in the decision of the *Schechter* case, their dissent was based on an entirely different ground and one that did not involve the question of the power of Congress to regulate the labor relations

between the mine owner and his employees engaged in mining operations.

Thus it is seen that this Court has held time and time again for nearly a century that the power now claimed by the National Labor Relations Board to regulate the labor relations in the manufacturing business involved in the case at bar is a power that is vested in the several States and is not within the scope, jurisdiction or power of the Federal Government. The learned Court below (the Circuit Court of Appeals of the Ninth Circuit) held, however, that the *Carter Coal* case had been, in effect, overruled by the several decisions of this Court in connection with the National Labor Relations Act—the so-called Wagner Act—to which reference will be made a little later. Strangely enough, the Court below does not seem to have considered the *Schechter* case and the long line of decisions, to some of which reference has been made, declaring and enforcing the same principle. It is not for counsel to suggest to this Court what it meant by its decision in the Wagner Act cases. We have argued before other courts that it is incredible that this Court should have intended to overrule this long established and fundamental constitutional principle and the long line of cases declaring and enforcing it, without considering them at length, and without announcing that the principle is a false one, and that the cases declaring it and enforcing it are overruled.

The decision of the Court below is that "if any substantial percentage of a product produced in a state is produced to enter interstate or foreign commerce," the Federal Government and not the State has power to

regulate the production and the labor relations between the employer and the employees engaged in production. Circuit Judge Haney carried this theory to its logical conclusion and said that if even one per cent of the product moves in interstate commerce, the power to regulate is in the Federal Government. This entire theory is diametrically contrary to the long line of decisions by this Court, to some of which attention has already been invited. If it is the law, then those decisions are not the law. We submit that the view of the Court below is wrong and that it attempts to introduce into the equation an entirely false element. The controlling fact is what is the *nature* of the activity in question—not what will later be done with the products arising as a result of that activity. If the nature of the activity is local, then it is clear that if our Federal system is to be preserved, the control of that activity must rest with the State, not with the Federal Government. The nature of the activity of *production* is not affected by what is done with the product *after* production is complete. This is equally true whatever percentage—whether 39 per cent as in the case at bar, whether 50 per cent or 100 per cent—of the product may thereafter move in interstate commerce. We call attention to the fact that in practically every one of the cases heretofore reviewed, either all or the great majority of the product was intended to move in interstate commerce and did, in fact, so move. Yet it was held that the Federal Government had no jurisdiction to regulate the activity; that this did not deprive the States of their jurisdiction and confer it upon the Federal Government. To hold as the Court below did, is to overrule all these decisions.

Any other rule than that established by the numerous decisions of this Court, it is submitted, would be not only unsound in principle but unworkable in practice. In the first place it would make either (a) the *intent* of the manufacturer or other producer of a commodity, or (b) the fact of what is done with the product *after production is complete*, control the jurisdiction to regulate production, as between the State on the one hand and the Federal Government on the other. Either is simply impossible.

If the intent of the Producer is controlling, *when* is that intent to be determined? The Producer may start production with the intention of selling it within the State; may later change his mind and decide to sell it out of the State; and may later again change his mind and decide to sell it within the State. Which government is to have jurisdiction to regulate the matters connected with production? Or is the jurisdiction to shift back and forth like a shuttle-cock between the State and the Federal Government each time the Producer changes his mind? Meantime, how is the intent of the Producer to be established? By the time it is established it may well be either that the Producer had changed his mind or that production is complete and the question moot. Moreover, can it be that where two persons are engaged in exactly the same activity side by side—for example, two packing plants, both buying their raw material within the State—one is subject to State regulation and the other to Federal regulation, because one expects to

sell his finished product inside the State and the other expects to sell his outside the State?

Still further, which government has jurisdiction in the case (which is a very common case), where the Producer at the time of production has *no intent either way?* Probably a large part of the goods produced in this country are produced under just this condition. The Producer brings them into being with the idea of selling them in whatever market he can sell them to the best advantage. Which government is to have jurisdiction over the production? We might elaborate instances at length. Enough have been given, we trust, to show that any attempt to fix jurisdiction as between the State and the Federal Government by the intent of the Producer is not only contrary to sound principle and the controlling decisions, but would be utterly unworkable, and indeed impossible, in practice.

Now suppose it is suggested that the conflicting claims of jurisdiction between the State and the Federal Government to regulate production shall be determined by what is done with the product after production—that is, by the fact as to whether it does or does not move in interstate commerce. This would be to make jurisdiction over the activity of production depend *upon a fact occurring after production is finished.* Under this rule if the product was sold in intrastate commerce the State would have jurisdiction. If the product moved in interstate commerce the Federal Government would have jurisdiction. But which government would have jurisdiction

while the production was taking place? That is the time when jurisdiction must be exercised if it is to be exercised at all. Is it not obvious that such a rule would be both unsound in principle and impossible in practice?

It is again submitted that the only sound rule, the only constitutional rule and the only practical rule is that to which this Court has consistently adhered and has so often declared and enforced, as shown in the cases heretofore reviewed.

The decision of the learned Court below confuses two separate and distinct activities, namely, production and distribution. They are, *in fact,* separate activities. They have been held to be separate in law as well by all the decisions of this Court heretofore cited. When the farmer grows a crop, or the miner mines minerals, or the lumberman cuts timber, or the manufacturer manufactures a product, he is engaged in production, not distribution. If, after the crop is grown, the farmer loads it into a truck and moves it across the state line to sell it, he is not then engaged in production but in the *separate* activity of distribution. The fact that the State has jurisdiction over his local activities in producing the crop does not give the State jurisdiction over his subsequent and separate activity of distribution in interstate commerce. No more, it is submitted, does the fact that the Federal Government has jurisdiction of his activity of distribution give it jurisdiction over the separate and precedent activity of production. The fact that when the farmer produced the crop he either did or did not expect that

after it was produced he would move it in interstate commerce, cannot change the nature of the activity of production. Nor can the fact that when he produced it he did *not* expect thereafter to move it in interstate commerce change the fact that if he *does* move the finished product in interstate commerce, that activity is subject to regulation by the Federal Government. Hence, we respectfully insist that both on controlling authority and as a matter of sound and necessary principle the element which the learned Court below considered determinative (namely, what percentage of the finished product is intended to move or does in fact move thereafter in interstate commerce) is a false element in the equation.

It should not be forgotten that the power delegated to the Federal Government is simply the power to regulate "commerce among the several States." We submit that by no process short of nullifying the whole purpose and intent of the Constitution and ignoring as well its express provisions, can the conclusion be reached that this constitutes a delegation of power to regulate activities which are *not* commerce among the several States, and which indeed *are not commerce at all.* The production of goods is not commerce. This is as true of producing them by manufacturing processes as it is of producing them by raising crops. In its final analysis, the claim of power asserted by the Government is, we submit, nothing short of a claim to a power which is not granted to it by the Constitution, but is *denied* to it. We respectfully submit that to sustain this claim would be amendment of the Constitution, if not indeed nullification.

The Wagner Act Decisions.

The learned Court below held that the case at bar is controlled by the decisions in the so-called Wagner Act cases, particularly the *Jones & Laughlin* case, the *Friedman-Marks* case, and the *Fruehauf* case. It further held that they had the effect of overruling the *Carter Coal* case and (we assume, although the Court below did not mention them) the long line of other decisions announcing and enforcing the same principle. But this view seems to overlook or ignore the fundamental difference and distinction in the *facts* of those cases and the case at bar. In all those cases this Court was at pains to point out the fact that the movement in interstate commerce had commenced *long before* the activity production commenced. The activity of production was in fact *in the very midst of* interstate commerce. In the *Jones & Laughlin* case this Court pointed out all of the various activities in interstate commerce that preceded the commencement of the manufacturing operations. It included shipment of ore, coal, limestone; it included the use of railroad facilities, of lake and river facilities and much more to like effect. The activity of manufacture was likened to the *heart* of a self contained highly integrated body, drawing in raw materials from numerous states, transforming those materials and then pumping them out to all parts of the nation. Obviously we have no such situation in the case at bar.

In the *Friedman-Marks* case this Court pointed out that 99.57 per cent of the woolen and worsted goods which

were manufactured into clothes were brought in from outside states. In the *Fruehauf* case the facts were similar. Most of the lumber was transported from southern States; most of the finished parts were transported from States other than the State where the manufacturing plant was located; more than 50 per cent of other materials used were brought in from other States.

It seems clear that the holding in these cases did not and does not involve any holding that the State is to be denied the right to regulate manufacturing or other production within its borders where all or most of the materials which are used are procured within the State. It seems reasonable to assume that this was the view of this Court. It would be a violent assumption that this Court intended to overrule the long line of cases heretofore noted, and the principles that have become a part of the fabric of our constitutional system, without even mentioning them.

In considering a problem so realistic and so highly important as that of drawing the dividing line between the jurisdiction of the State and the jurisdiction of the Federal Government, it seems wise to bear in mind the warning so frequently given by this Court that we should not allow ourselves to be governed by the "tyranny of labels." We have in mind particularly the labels that have come to be known as "flow" of commerce and "stream" of commence. No doubt these have their place as aids to, but certainly not as controlling, fundamental constitutional

principles. The facts in the Wagner Act cases may have been or may not have been technically within the concept of "flow" or "stream" of commerce. We doubt if this is of major importance. They are, however, very analogous to cases in which this Court has held that where the power of Congress *has attached* by reason of the fact that interstate commerce has commenced, it is not lost by a temporary holding of the goods in a State. It is not necessary to argue that cases like *Swift v. United States,* 196 U. S. 375; *Stafford v. Wallace,* 258 U. S. 495; *Chicago Board of Trade v. Olsen,* 262 U. S. 1, are controlling. Perhaps they are rather illustrations of the same underlying principle which led this Court to hold in the Wagner Act cases that the power of Congress, which had attached by the large movement of goods in interstate commerce prior to the commencement of manufacture, was not lost. It would seem that no one can deny that there is a fundamental difference between the case where large movements in interstate commerce have commenced (and so the power of Congress has attached) on the one hand, and the case at bar, where no interstate commerce or movement has occurred, and hence, nothing has occurred to which the power of Congress can attach. The power of Congress to regulate interstate commerce, as this Court has frequently indicated, is a realistic power. It would seem that there must be some realistic occurrence before that power can attach. A mere idea or hope or expectation in the mind of a farmer or a miner or a manufacturer that, after his farming or his mining or his manufacturing

is completed, the resultant product may be or will be shipped in interstate commerce, seems clearly not to be such a realistic occurrence.

No one has ever suggested, so far as we know, that the *Swift* case, the *Stafford* case and the *Olsen* case overrule or are inconsistent with the principles and decisions of the *Carter Coal* case, the *Schechter* case, and the others heretofore reviewed. It is submitted that the Wagner Act decisions are no more inconsistent. In both series of cases this Court took what may be termed a realistic view of interstate commerce. In both the interstate commerce had commenced and, therefore, *the power of Congress had attached,* before the activity in question commenced. This Court, looking at the matter realistically, found that the power of Congress had not been lost. It is submitted that the same realistic viewpoint confirms the conclusion that where, as in the case at bar, interstate commerce has *not* commenced before the manufacturing or like activity, but the production and its precedent steps are essentially *intrastate, the power of the State has not been lost.* Until interstate commerce begins, there would seem to be nothing to which the power of Congress to regulate interstate commerce can attach. Any other view must necessarily result, as this Court has so frequently and so clearly pointed out, in giving the Federal Government almost universal power and in rendering the States almost powerless. It would result in amending the Constitution and in transforming the power of Congress, so carefully re-

stricted to regulating interstate commerce, into a general power to regulate practically every activity of life.

It is submitted that this basic difference in the facts between the several Wagner Act cases and the case at bar points the distinction in the legal principles which control. In the former cases interstate commerce on a substantial scale, and directly connected with the activity in question, had commenced long before that activity commenced. The power of Congress had attached. The particular activity in question was aptly likened to the heart pumping in the blood and pumping it out again, both in interstate commerce. The holding of the Court was, we submit, nothing more than a holding that the heart is part of the circulatory system (which, in the figure, represents interstate commerce), and that the sovereign which has jurisdiction over the circulatory system has jurisdiction over the heart. But the case at bar is obviously and basically different. The manufacturing activities here involved are no part of that circulatory system. They are separate and distinct from it. There is not any interstate commerce before production, or even while production is going on. This is as true of the activity involved here as it is of the activity of a farmer. We again respectfully urge that in the case at bar, as distinguished from the Wagner Act cases, there is nothing to which the power to regulate interstate commerce can attach until after production is complete. This is a fundamental difference in fact, and hence in the legal principle which controls, that the court below seems completely to have overlooked.

Those Who Framed and Those Who Adopted the Constitution Intended and Understood That This Power Was Reserved to the Several States.

That those who framed the Constitution and the people who adopted it understood and intended that the several States, and not the Federal Government, should have jurisdiction over such an activity as the one involved in the case at bar is so clear that we doubt if any one will question it. Indeed, if any one at that time had suggested that the Constitution deprived the States of this power and conferred it on the Federal Government, it is safe to say that the Constitution would never have been adopted. The whole history of the times proves that the people were utterly unwilling to grant to the Federal Government any such power of their daily lives and the activities by which they earned their livelihood. The people never would have consented to such emasculation of the power of the States and to such centralization in the Federal Government of well-nigh absolute power over their daily lives and activities as this would bring about. This fact was noted and considered by this Court in the *Carter Coal* case, 298 U. S. at pages 295-6. It concluded this branch of the discussion with the following sentence:

> "It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified."

A rather diligent search of the political literature of the time of the adoption of the Constitution, and of the early days of the Republic, fails to disclose any suggestion that the interstate commerce clause, or indeed any part of the Constitution, would permit to the Federal Govern-

ment any such power over the lives and activities of the people or any such restriction and emasculation of the powers of the States. Indeed, we think it can fairly be said that it shows the direct contrary. Any attempt to go at length into the numerous writings of the time would unduly extend this brief. A few representative quotations, however, may not be amiss.

In *The Federalist Papers,* No. XVII, written by Hamilton, who was the outstanding proponent of a strong Federal Government, it is said:

> "The administration of private justice between the citizens of the same state; *the supervision of agriculture,* and of other concerns of a similar nature; all those things, in short, *which are proper to be provided for by local legislation,* can never be the desirable cares of a general jurisdiction. It is therefore improbable, that there should exist a disposition in the federal councils, to *usurp* the powers with which they are connected * * *."

In the same papers, No. XLII, written by Madison, it is clearly indicated that in his view the power which would be given to the Federal Government if the Constitution were adopted is limited to regulating actual transportation between the States, not to the production of articles intended for such transportation. Among other things, it is said:

> "The defect of power in the existing confederacy, to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience. * * * A very material object of this power was the relief of the states which import and export through other states, from the improper contributions levied on them by

the latter. Were these at liberty to regulate the *trade between state and state*, it must be foreseen, that ways would be found out, to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter, and the consumers of the former. * * *

"The necessity of a superintending authority over the *reciprocal trade* of confederated states, has been illustrated by other examples as well as our own."

In No. XLIV, written by Madison, it is said:

"But ambitious encroachments of the federal government, on the authority of the state governments, would not excite the opposition of a single state, or of a few states only. They would be signals of general alarm. * * * *But what degree of madness could ever drive the federal government to such an extremity?* * * *

"The only refuge left for those who prophesy the downfall of the state governments, is the visionary supposition, that the federal government may previously accumulate a military force for the projects of ambition."

If the intent of the Constitution was that the Federal Government should not have authority to regulate the activities of agriculture or manufacture, even though the products were intended to be thereafter shipped in interstate commerce, then it is submitted that is still the rule of the Constitution. The case is not at all the same as if some factual situation had developed that was not contemplated by the Constitution. The fact is that at the

very time the Constitution was adopted, shops and factories were making goods that were intended for interstate shipment and farmers were growing crops that were intended for interstate shipment. If the Constitution had declared in express terms that the States and not the Federal Government had the power to regulate such activities, no one could fairly contend that this Court should now rule the opposite. It is submitted that the framers intended and the Constitution does lay down this rule, either in express terms or by clear implication. That which is clearly implied is as much a part of the Constitution as that which is expressed in specific terms. *South Carolina v. United States,* 199 U. S. 437.

It may be argued that the public interest would be subserved by depriving the States of this power and conferring it on the Federal Government. But this is a matter of opinion and judgment. Some may, in good faith, strongly believe it; others, in equal good faith, just as strongly deny it, and insist that the welfare of the country can only be promoted by preserving the powers of the States and maintaining the Federal System. But after all, the question is a political, not a judicial one. If the courts were to consider such arguments *it would be the end of constitutional government.* The wisdom of every limitation in the Constitution might then be argued, and, if found unwise, set aside. If this or any other limitation in the Constitution is contrary to the public welfare, then the people have the power to change it. But until they do change it, it is, and, if we are to preserve the constitu-

tional government, it must be "The Supreme Law of the Land." Washington foresaw that situations of this very kind would arise. So far as we know, no one has ever attempted to challenge the profound truth of the following excerpt from his Farewell Address, which might have been written to meet the very case now before the Court:

> "If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be *no change by usurpation;* for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

And again in the same address:

> "The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all."

Thomas Jefferson wrote:

> "I consider the foundation of the Constitution as laid on this ground: That 'all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people.' To take a single step beyond the boundaries thus specifically drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

(Ford, Writings of Thomas Jefferson, Vol. V, p. 285.)

President Andrew Jackson, in his Farewell Address to the people at the conclusion of his second term, uttered words of counsel and warning that are equally pertinent and compelling today. Among other things he said:

> "It is well known that there have always been those amongst us who wish to enlarge the powers of the General Government, and experience would seem to indicate that there is a tendency on the part of this Government to overstep the boundaries marked out for it by the Constitution. Its legitimate authority is abundantly sufficient for all the purposes for which it was created, and its powers being expressly enumerated, there can be no justification for claiming anything beyond them. Every attempt to exercise power beyond these limits should be promptly and firmly opposed, for one evil example will lead to other measures still more mischievous; and if the principle of constructive powers or supposed advantages or temporary circumstances shall ever be permitted to justify the assumption of a power not given by the Constitution, the General Government will before long absorb all the powers of legislation, and you will have in effect but one consolidated government. * * *; and every friend of our free institutions should be always prepared to maintain unimpaired and in full vigor the rights and sovereignty of the States and to confine the action of the General Government strictly to the sphere of its appropriate duties."

The Rule Contended for by the Government Would Result in Constant Clashes of Jurisdiction.

If the principle laid down by the court below should be adopted, it would inevitably lead to multitudinous clashes between the Federal Government and the several States, resulting in great confusion and in serious injury to every line of productive activity. We do not suggest that this is any argument against holding that the Federal Government has jurisdiction, if that right is clear under the Constitution. But we do suggest that if the right is not clear, then it is worthy of consideration. The Constitution was intended to create a practical, working, efficient plan to promote the public welfare. If there is fair doubt as to its construction and application, it would seem entirely proper to consider the serious injurious effects upon the public welfare that would result from a particular construction.

It cannot be expected that the several States will readily surrender jurisdiction to regulate the manifold activities of production, whether manufacturing, agricultural or otherwise, that take place entirely within their respective borders. If both the Federal Government and the several States attempt to regulate the same activity, it is almost certain that clashes in jurisdiction will result, and that different regulations will be prescribed. Quite aside from the unfortunate effects of numerous clashes in jurisdic-

tion, it must inevitably seriously hamper the orderly processes of business and production. Simply for purposes of illustration, we invite attention to recent action by and in the State of Wisconsin. In the United States Law Week for November 23, 1937, at page 14, there is a report of a case decided by the Circuit Court of that State. *Wisconsin Labor Relations Board v. Rueping Leather Co.* The Court sustained the action of the State Labor Board, acting under a law of the State, in assuming jurisdiction to regulate the labor relations of a manufacturer of leather goods who shipped the bulk of his finished product in interstate commerce. We refer to this only as an illustration of what it seems must inevitably happen on a large scale and throughout the country, if the principles announced by the court below should be adopted. Certainly there must be some activities of production that are subject to regulation by the States. If the intent of the producer of goods or the percentage of the finished product that will later move in interstate commerce is to control the matter as to whether the State or the Federal Government has jurisdiction, then all lines of production are likely to find themselves caught between the upper and nether millstones of conflicting State and Federal regulations. How far this will handicap and impede legitimate business and interfere with the public welfare may be a matter of opinion. But it would seem certain that it is bound to do so to a substantial and serious extent.

Conclusion.

If the system of dual sovereignty established by the Constitution is to be maintained, then at some point *there must be a line drawn* between the power of the State and the power of the Federal Government to regulate local production, whether it be agricultural or industrial. This Court expressly so declared in the *Jones & Laughlin* case. Among other things it said, in referring to the power of Congress:

> "Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." (301 U. S. at page 37.)

If the line is not drawn so as to leave to the several States the power to regulate such productive activities as the one involved in the case at bar, then it is hard to see where it can be drawn at all. It is believed that there can be no answer to the truth so often declared and enforced by this Court, that to allow the Federal Government to exercise the power here asserted would be to destroy the Federal System and create by judicial decree a totally centralized government. This would be, in the language of the Chief Justice in the *Carter Coal* case "for the court to amend the Constitution by judicial decision". It would annul the basic plan and purpose of the Constitution, would emasculate the States, and would make practically every activity of life subject to control from Washington.

It is too plain for doubt, we submit, that this would do violence to the purpose and intent of those who framed and those who adopted the Constitution, to the spirit and letter of the Constitution itself, and to the often expressed views of the great statesmen of the past as to what is essential if we are to preserve America, and would overrule nearly a century of decisions of this Court. It is believed to be no exaggeration to state that upon the decision in this case may well turn the preservation of our constitutional system, and perchance of the nation. It is not merely unconstitutional for the Federal Government to attempt thus to regulate the daily lives and activities of the people of the nation. It is impossible. The territory is too vast; the number of people and activities are too great; the local conditions are too diverse; and the spirit of local independence in local affairs is too strong within the breasts of the people, for it to be physically possible for the Federal Government to do the task, or for the people to submit to such a usurpation of power. If it were permitted, it might well mean the end of our institutions and of our nation. As President Washington wisely says in his Farewell Address:

> "But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

The claim to power now made is perhaps the most striking illustration ever presented of what President Jackson referred to in his Farewell Address as

> "a tendency on the part of this Government to overstep the boundaries marked out for it by the Constitution".

Should it be allowed to prevail, his prophetic words may well come true and we may wake to find that

> "the General Government will before long absorb all the powers of legislation, and you will have in effect but one consolidated government".

The Federal System which the Constitution sets up is one of delicate balance between the powers of the several States and the powers of the Federal Government. The system can only be preserved if the balance is preserved. If the power here claimed for the Federal Government should be allowed, the balance is utterly destroyed. Practically all of the weights will then be on one side of the scale.

Even aside from the provisions of our Constitution, we have seen, through the experience of other countries in recent years, how disastrous are the effects which flow from concentration of well-nigh complete power in a few hands, to demonstrate how destructive this is to the fundamentals of liberty. But above and beyond this, we have our written Constitution, which it is submitted clearly denies to the Federal Government, and reserves to the several States, the power here claimed. It would be impossible to declare this more clearly or to demonstrate it more conclusively than this Court has done on many occasions throughout the life of the Republic. This Court has once again the opportunity to preserve our constitutional system.

The judgment of the court below should be reversed.

Respectfully submitted,

H. W. O'MELVENY,
WALTER K. TULLER,
As Amici Curiae.

LOUIS W. MYERS,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

No. 536.—October Term, 1937.

Santa Cruz Fruit Packing Company, Petitioner, *vs.* National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[March 28, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The National Labor Relations Board on April 2, 1936, after hearing, found that petitioner, Santa Cruz Fruit Packing Company, a California corporation, had been engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, and ordered petitioner to desist from such practices, to reinstate with back pay certain employees who had been discharged, and to post appropriate notices. 1 N. L. R. B. 454. Upon petition of the Board, the Circuit Court of Appeals affirmed the order so far as it related to petitioner's employees at its Oakland plant. 91 F. (2d) 790. In view of the importance of the question with respect to the application of the National Labor Relations Act, this court granted certiorari. — U. S. —.

There is no dispute as to the pertinent facts. The findings of the Board, supported by evidence, show the following:

Petitioner is engaged at its plant at Oakland in canning, packing and shipping fruit and vegetables, the bulk of which are grown in that State. During the "peak" season, petitioner employes from 1200 to 1500 persons of whom about 30 are warehousemen. The total "pack" in the year 1935 amounted to about 1,699,270 cases. Of this amount about 37 per cent. were shipped in interstate or foreign commerce, 9.02 per cent. being sent to foreign countries and approximately 473,620 cases, or about 27.89 per cent. to various points in the United States outside California. The sales to pur-

chasers outside the State were under either f.o.b. or c.i.f. San Francisco Bay Point contracts.

The methods of transportation are by water, rail and truck. Export shipments go by water and this is also the chief sort of carriage to points within the United States outside California, about 20 per cent. being shipped by rail and an undetermined amount by truck directly to the point of destination. "There is a constant stream of loading and shipping of products" out of petitioner's plant throughout the entire year. From 3000 to 4000 cases are loaded daily in the various vehicles of conveyance. That loading is a substantial and regular part of the work of the warehousemen in petitioner's employ. When the shipments are by rail or overland trucks, these employees load directly into the equipment of the principal carriers. When shipments are by boat, the warehousemen load the cases into the trucks which carry the goods to the docks.

Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, is a labor organization affiliated with the American Federation of Labor. Its efforts to organize the Oakland plant were begun in July, 1935, and many of the permanent warehousemen made application for membership. When this came to the attention of petitioner early in August, the General Manager announced that he would not permit a union in the plant because of competitive conditions. On their return from a union meeting at which the men were to be initiated, members of the night shift were prevented from entering the plant and the next morning the members of the day crew were similarly excluded. A picket line then formed, on the morning of August 8th, was maintained until September 27th with such effectiveness that eventually the movement of trucks from warehouses to wharves ceased entirely. The Board found: "The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned goods from the cars prior to their reloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San

Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move 'hot' Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo''. Petitioner points out that the refusal of the other unions to handle petitioner's goods was a violation of an arbitration award made in October, 1934, following the San Francisco maritime strike of that year.

The Board found that interference with the activities of employees in forming or joining labor organizations results in strikes and industrial unrest which habitually have had the effect in the canning industry of impeding the movement of canned products in interstate and foreign commerce. Reference was made to official statistics of the United States Department of Labor in relation to the canning and preserving industries from which it appeared that of the fifteen strikes and lockouts in 1934, and the first six months of 1935, eight were the outcome of difficulties in regard to union recognition and discrimination for union activities, 7,484 workers being involved in those stoppages.

The Board concluded that the discharge of the employees named and the refusal to reinstate them constituted an unlawful discrimination under the National Labor Relations Act and that the acts of petitioner had led and tended to lead to labor disputes burdening and obstructing commerce.

Petitioner contends that the manufacturing and processing in which petitioner is engaged are local activities and that the Board was without jurisdiction over the labor dispute involved in this case.

First.—There is no question that petitioner was directly and largely engaged in interstate and foreign commerce. We have often decided that sales to purchasers in another State are not withdrawn from federal control because the goods are delivered f.o.b. at stated points within the State of origin for transportation. See *Savage* v. *Jones*, 225 U. S. 501, 520; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 114, 122; *Pennsylvania R. R. Co.* v. *Clark Coal Mining Co.*, 238 U. S. 456, 465-468. A large part of the interstate commerce of the country is conducted upon that basis and the arrangements that are made between seller and purchaser with respect to the place of taking title to the commodity, or as to

the payment of freight, where the actual movement is interstate, does not affect either the power of Congress or the jurisdiction of the agencies which Congress has established. *Pennsylvania R. R. Co.* v. *Clark Coal Mining Co., supra.*

Second.—The power of Congress extends not only to the making of rules governing sales of petitioner's products in interstate commerce, as, for example, with respect to misbranding under the Federal Food and Drugs Act (21 U. S. C., Sections 1 to 26), or with respect to forbidden discriminations in prices under the Clayton Act (15 U. S. C. 13), but also to the protection of that interstate commerce from burdens, obstructions and interruptions, whatever may be their source. *Second Employers' Liability Cases,* 223 U. S. 1, 51. The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry, although that industry when separately viewed is local. It is upon this well-established principle that the constitutional validity of the National Labor Relations Act has been sustained. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 38.

Petitioner urges that the principle is inapplicable here as the fruits and vegetables which petitioner prepares for shipment are grown in California and petitioner's operations are confined to that State. It is not a case where the raw materials of production are brought into the State of manufacture and the manufactured product is handled by the manufacturer in other States. In view of the interstate commerce actually carried on by petitioner, the conclusion sought to be drawn from this distinction is without merit. The existence of a continuous flow of interstate commerce through the State may indeed readily show the intimate relation of particular transactions to that commerce. *Stafford* v. *Wallace,* 258 U. S. 495, 516; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 33. But, as we said in the *Jones & Laughlin* case, the instances in which the metaphor of a "stream of commerce" has been used are but particular, and not exclusive, illustrations of the protective power which Congress may exercise. "The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious actions springing from other sources". *Id.,* p. 36.

Such injurious action burdening and obstructing interstate trade in manufactured articles may spring from labor disputes irrespective of the origin of the materials used in the manufacturing process. And the place where the manufacturer makes his sales is not controlling if the sales in fact are in interstate commerce. A few illustrations, from our many decisions, will suffice. In *Loewe* v. *Lawlor* [1908], 208 U. S. 302, the conspiracy of the "United Hatters", to compel the plaintiffs to unionize their factory, was held to fall within the Federal Anti-Trust Act because it was aimed at the destruction of the interstate trade in the manufactured hats. In *United Mine Workers* v. *Coronado Co.* [1922], 259 U. S. 344, 407, 408, the Court said that "Coal mining is not interstate commerce and the power of Congress does not extend to its regulation as such", but that "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint". And in the second *Coronado* case [1925], 268 U. S. 295, 310, the Court held that the evidence was adequate to show that the purpose was to stop the production of non-union coal and prevent its shipment to markets of other States, and that a combination to that end would constitute a direct violation of the Anti-Trust Act. Another illustration is found in *Bedford Cut Stone Company* v. *Journeymen Stone Cutters' Association* [1927], 274 U. S. 37, 48, where a conspiracy of stone cutters was held to have "the immediate purpose and necessary effect of restraining future sales and shipments in interstate commerce" of the building stone which was quarried at petitioners' plants.

With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried, and fruit and vegetables grown. The same principle must apply, and has been applied, to injurious restraints of interstate trade which are caused by the practices of manufacturers and processors. *Standard Oil Company* v. *United States*, 221 U. S. 1; *United States* v. *American Tobacco Company*, 221 U. S. 106. The case of *Carter* v. *Carter Coal Company*, 298 U. S. 238, did not establish a different principle or overrule the decisions which we have cited. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation, supra*, p. 41. Nor are the cases in point which are cited by petitioner with re-

spect to the exercise of the power of the State to tax goods, which have not begun to move in interstate commerce or have come to rest within the State, or to adopt police measures as to local matters. In that class of cases the question is not with respect to the extent of the power of Congress to protect interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with that paramount authority. *Bacon* v. *Illinois,* 227 U. S. 504, 516; *Stafford* v. *Wallace, supra,* p. 526; *Minnesota* v. *Blasius,* 290 U. S. 1, 8.

Third.—It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still "commerce", and not all commerce but commerce with foreign nations and among the several States. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *Schechter Corporation* v. *United States,* 295 U. S. 495, 546. "Activities local in their immediacy do not become interstate and national because of distant repercussions". *Id.,* p. 554.

To express this essential distinction, "direct" has been contrasted with "indirect", and what is "remote" or "distant" with what is "close and substantial". Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as "interstate commerce", "due process", "equal protection". In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

There is thus no point in the instant case in a demand for the drawing of a mathematical line. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases. The critical words of the provision of the National Labor Relations Act in dealing with the described labor practices are "affecting commerce", as defined (Sec. 2(6)). It is plain that the provision

cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 per cent, and not to more than 50 per cent, of its production cannot be deemed controlling. The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes.

The question of degree is constantly met in other relations. It is met whenever the Interstate Commerce Commission is required to find whether an intrastate rate or practice of an interstate carrier causes an undue and unreasonable discrimination against interstate or foreign commerce. 49 U. S. C., Sec. 13(4). *The Shreveport Case,* 234 U. S. 342, 351. It is met under the Federal Employers' Liability Act, where the question is whether the employee's occupation at the time of his injury is "in interstate transportation or work so closely related to such transportation as to be practically a part of it". *Chicago & Northwestern Rwy. Co.* v. *Bolle,* 284 U. S. 74, 78, 79; *New York, New Haven & Hartford R. R. Co.* v. *Bezue,* 284 U. S. 415, 420. It is met in the enforcement of the Clayton Act in determining whether the effect of the described provisions in contracts for the sale of commodities is "to substantially lessen competition". 15 U. S. C., 13, 14. *Standard Fashion Company* v. *Magrane-Houston Company,* 258 U. S. 346, 356, 357; *Federal Trade Commission* v. *Raladam Company,* 283 U. S. 643, 647, 648.

Such questions cannot be escaped by the adoption of any artificial rule.

Fourth.—The direct relation of the labor practices and the resulting labor dispute in the instant case to interstate commerce and the injurious effect upon that commerce are fully established. The warehousemen in question were employed by petitioner in loading its goods either into the cars of carriers or into the trucks which transported the goods to the docks for shipment abroad or to other States. The immediacy of the effect of the forbidden discrimination against these warehousemen is strikingly shown by the findings of the Board. When the men found themselves locked out because of their joining the union, they at once formed a picket

line and this was maintained with such effectiveness that eventually "the movement of trucks from warehouse to wharves ceased entirely". The teamsters refused to haul, the warehousemen at the dock warehouses declined to handle, and the stevedores between dock and ship refused to load, petitioner's goods. These became, in the parlance of the men, "hot" cargo. Petitioner says that this was an unlawful conspiracy of those sympathizing with its discharged warehousemen, but it was the discrimination against them which led directly to the interference with the movement from the plant and elicited the support so effectively given.

It would be difficult to find a case in which unfair labor practices had a more direct effect upon interstate and foreign commerce.

The relief afforded by the Board, in requiring petitioner to desist from the unfair labor practices condemned by the Act and to reinstate the discharged employees with back pay, was properly sustained by the Circuit Court of Appeals, and its order is affirmed.

Affirmed.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 536.—October Term, 1937.

Santa Cruz Fruit Packing Company, Petitioner, *vs.* National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[March 28, 1938.]

Mr. Justice Butler, dissenting.

Carter v. *Carter Coal Co.*, 298 U. S. 238, decided that Congress lacks power to regulate terms and conditions of employment of those engaged in local production of commodities sold and about to be shipped in interstate commerce. The circuit court of appeals found two questions for solution. One was whether upon that point the *Carter* case, in 1936, has been overruled by our decision in 1937 in *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1. The second was whether the power extends to cases where only 39% of goods locally produced are shipped in interstate commerce. The court, one judge dissenting, upheld the order. Each of the judges wrote an opinion; two held this Court has overruled the *Carter* case.

If the decision of the *Carter* case upon the point stated stands, the Board's order cannot be upheld. The lower court made its decision depend upon that question. Save authoritatively to decide it here, there was no reason for granting the writ. But the opinion just announced does not refer to the question.

In the *Jones and Laughlin* and companion cases, four dissenting Justices thought the Court then departed from well-established principles followed in the *Carter* case and quoted (p. 96) a passage from it expounding what it meant by "direct" effect on interstate commerce as distinguished from what is "indirect". And the dissenting opinion insisted (p. 97) that, under the *Carter* decision, the facts in those cases did not disclose any direct effect upon interstate commerce, and said: "A more remote and indirect interference with interstate commerce or a more definite invasion of

the powers reserved to the states is difficult, if not impossible, to imagine."

But the dissent failed to elicit from the Court any statement as to whether it meant to overrule the *Carter* case. The opinion does not discuss that case. It does, however, contain the following (p. 41): "In the *Carter* case . . . the Court was of the opinion that the provisions of the statute relating to production were invalid upon several grounds,—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process. These [meaning the *Schechter* and *Carter*] cases are not controlling here." The later decisions of this Court involving the power of Congress to deal with labor relations in local production do not refer to the *Carter* case. At least until this Court definitely overrules that decision, it should be followed.

Upon the authority of that case, I would reverse the order of the circuit court of appeals on the ground that, as applied here, the Act is unconstitutional.

Mr. Justice McReynolds concurs in this opinion.